

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302 and 29 Delaware Code, Chapter 101 (21 Del.C. §302 and 29 Del.C. Ch. 101)

PROPOSED

PUBLIC NOTICE

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17)

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The Delaware Department of Transportation Division of Motor Vehicles, pursuant to 21 Del.C. §302 and 29 Del.C. Chapter 101, Subchapter II, proposes to amend the following rules and regulations concerning Division operations, and described in detail below this notice. Written comments concerning these proposed regulations should be sent by April 30, 2006 to Jack Eanes, Chief of Operations, Division of Motor Vehicles, 303 Transportation Circle, P.O. Box 698, Dover, Delaware 19903.

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17)

~~A. The law enforcement officer shall submit the person's (if a Delaware licensee) driver's license or permit to the Secretary along with the certificate (MV Form 529—official notice and order of revocation/temporary license) required by S2742(B) or (C) immediately after the day of arrest to the Division of Motor Vehicles Administration Office, Public Safety Building, Dover, DE.~~

~~B. No more than one continuance (request to reschedule) will be allowed on behalf of either party (defense or State).~~

~~C. A request for a continuance must be received by the hearing officer or hearing unit personnel no later than two (2) working days prior to the scheduled time of hearing in order to allow this Division an opportunity to contact all parties involved.~~

~~D. The decision of the hearing officer shall be rendered as quickly as possible, but no later than 15 working days after the hearing, unless more time is needed to research the technicalities presented in the case.~~

~~Notice of the decision will be sent to the defendant, defendant's attorney and the law enforcement officer.~~

~~E. The appellant will be responsible for the cost of preparing any transcript of the hearing in the event of an appeal to Superior Court.~~

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302 and 29 Del.C. §10115

2.0 Purpose

This policy regulation establishes administrative procedures regarding the administrative hearing process for implied consent, administrative per se and other administrative hearings of record.

3.0 Applicability

This policy regulation interprets the following sections found in 21 Del.C. §2740 through §2750 in their entirety. This policy contains procedures necessary to implement the sections referenced above and other administrative hearings of record pertaining to license revocations, suspension, disqualifications and other DMV actions or decisions.

4.0 Substance of Policy

4.1 The arresting officer shall personally issue to the defendant the original copy of the MV 529 form at the time of issuance in all cases regardless of whether a temporary license was issued as well.

4.2 The following documents shall be submitted to the Division of Motor Vehicles Administration Office 303 Transportation Circle PO Box 698 Dover, DE 19903 immediately following issuance of the MV 529 Official Notice and Order of Revocation and Temporary License:

4.2.1 MV 529 Official Notice and Order of Revocation

4.2.2 Form 333 Probable Cause and Implied Consent form

4.2.3 Delaware driver's license

4.3 Documents referenced in 4.2 above that are not received by the Division within 30 days from the date of issuance will not be processed and no action will result against the defendant.

4.4 The defendant, the defendant's legal representative, or person acting on the defendant's behalf may request an administrative hearing within 15 days of the issue date on the MV 529 form. If the 15th day falls on a Saturday, Sunday, legal holiday, or any other day when the Division is not open for business the defendant will be given until the next succeeding business day to make the defendant's request. The request may be made in person at any Division of Motor Vehicles office, by mail, or by facsimile. The request for a hearing must be in written form.

4.5 Failure of the defendant, the defendant's legal representative, or person acting on the defendant's behalf to request the hearing within the 15 day time period will result in a license being immediately revoked for the appropriate period of time pursuant to 21 Del.C. §2742 and §2743.

4.6 A notice scheduling the hearing must be sent within 30 days of the hearing request. The scheduling notice shall be sent to the defendant, the arresting officer, and the defendant's legal representative if the Division has knowledge of the legal representative at the time the scheduling notice is sent.

4.7 A request for a continuance by the defendant, legal representative, or police officer will be considered as outlined below:

4.7.1 One continuance request will be granted to either party (defense or State) regardless of reason provided the request is received at least 1 business day prior to the hearing date.

4.7.2 A subsequent request for a continuance will be considered provided the request is in writing and received at least 1 business day prior to the hearing date. The request must contain travel documents, medical documents, employment documents, court documents, training documents, or other documents to support the continuance request.

4.7.3 An continuance request made on the day of the hearing will be considered in the event of an emergency. Documentation to verify the emergency must be submitted.

4.7.4 Continuance requests should be made directly to the Hearing Officer of record or in their absence, to the Driver Improvement Unit, Revocation Section, Hearing Staff, Driver Improvement Manager or Driver Improvement Assistant Manager.

4.8 The decision of the Hearing Officer following the administrative hearing shall be rendered within 15 working days.

4.9 The decision of the Hearing Officer is forwarded to a Motor Vehicle Specialist in the Administration Office who in turn will send notice of the Hearing Officer's decision to the defendant, law enforcement officer and the defendant's legal representative.

4.10 All hearings will be taped and the tapes will be retained by the hearing officer for one (1) year

should the hearing officer rule in favor of the state. However, if the ruling is in favor of the defendant, the tape does not need to be retained and may be reused and/or erased immediately. The hearing tapes are considered internal working documents and will not be released to either party regardless of the hearing officer's decision unless directed by the Division's Deputy Attorney General or by the court. A copy of the hearing tape will be made available to an approved transcription service in the event of an appeal of a ruling against the defendant.

4.11 Upon receipt of an appeal a copy of all printed material shall be made available to the Deputy Attorney General representing the Division of Motor Vehicles. Contact shall be made with an approved transcription service to determine the cost of the transcript and necessary copies. Contact shall be made with the Hearing Officer to make a copy of the specific hearing being appealed. The Hearing Officer shall forward a copy of the tape to the Administration Office where the transcription service shall pick up the tape. Upon receipt of the transcription copies they shall be distributed as follows: One copy each to the defendant, the defendant's legal representative, the Deputy Attorney General, the court, one copy and the defendant's DMV case file.

4.12 The appellant will be responsible for the cost of preparing the transcript of the hearing in the event of an appeal. The cost will include five (5) copies of said transcript.

4.13 Copies of the Hearing Officer's decision will be available to the defense and the State only upon request of an appeal of the decision.

4.14 The following personnel classifications are designated to hold administrative hearings for the Division of Motor Vehicles:

4.14.1 Chief of Driver Services

4.14.2 Driver Improvement Manager

4.14.3 Driver Improvement Assistant Manager Hearing Officer

4.14.4 Driver Improvement Hearing Officer

5.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. §10118(e).

2206 Revocation of a Driver's License/Driving Privilege Pursuant to Section 4103(b) and Section 2732(a-8) (Formerly Reg. No. 40)

~~Upon receiving a conviction for a violation of Section 4103(b), the driver's license and/or driving privileges shall be revoked for a period of 1 year.~~

~~However, if the violation involved high speed chase, injury to a police officer(s) or to other person(s), the revocation period will be for a period of 2 years contingent upon receiving a request and a copy of the police report from law enforcement.~~

~~A hearing may be requested only for the 2nd year of the revocation period, unless there is a question on the conviction belonging to the person being revoked.~~

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del.C. §4103(b), (c), 21 Del.C. §2732(a) (8), and 29 Del.C. § 10115.

2.0 Purpose

This policy regulation establishes administrative procedures regarding the revocation of a driver's license or driving privilege following a conviction of failure to stop at the command of a police officer.

3.0 Applicability

This policy regulation interprets the following sections found in 21 Del.C. §4103(b), (c) and §2732(a)(8).

4.0 Substance of Policy

4.1 Upon receipt of a first conviction for a violation of 21 Del.C. §4103(b) the driver's license and/or driving privilege shall be revoked for a period of one (1) year.

4.2 Upon receipt of information that a first conviction involved a high speed chase, injury to a police officer(s) or to other person(s), the driver's license and/or driving privilege shall be revoked for a period of two (2) years, provided a written request and copy of the police report is received from law enforcement, the court, or the Department of Justice.

4.3 An administrative hearing may be requested within 30 days of the effective date of the revocation for the action taken under 4.2 above. The scope of the hearing will be as follows:

4.3.1 Determine if the petitioner was charged with a violation of 21 Del.C. §4103(b) and was convicted of said violation.

4.3.2 Determine if the Division received a written request and copy of the police report from law enforcement, the court, or the Department of Justice requesting a two (2) year revocation based on a high speed chase or injury to police officers) or other(s).

4.4 Upon receipt of a second or further subsequent conviction the driver's license and/or driving privilege shall be revoked for a period of three (3) years.

4.5 No administrative hearing may be requested for a one (1) year or three (3) year revocation action as they are required by statute.

5.0 Severability

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the register of Regulations in accordance with 29 Del.C. §10118(e).

2207 Suspension of Permanent Licenses (Formerly Reg. No. 41)

~~If the suspension of a permanent license is for a non moving violation, such as failure to answer summons, default of a court fine, uncollectable check, judgement, or failure to have liability insurance on a motor vehicle, the permanent license shall be returned to the licensee at the time of reinstatement.~~

~~If the suspension of a permanent license is for a moving violation(s), the permanent license its cancelled, and at the time of reinstatement, a new 5 year driver's license shall be issued to the applicant and shall be valid for 5 years from the applicant's last birthday. The licensee shall not be required to pay for this license.~~

~~In both cases cited above, the normal reinstatement fee (\$25.00) shall be assessed.~~

~~This policy regulation is to be implemented immediately.~~

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302 and 29 Del.C. §10115.

2.0 Purpose

This policy regulation establishes administrative procedures regarding the suspension of permanent licenses and reinstatement thereof.

3.0 Applicability

This policy regulation interprets the following sections found in 21 Del.C. §2732(b), (g), §2733(1), §2118, §2942 and §2943

4.0 Substance of Policy

4.1 If the suspension of a permanent license is for a non moving violation, such as failure to answer summons, default of a court fine, uncollectable check, judgment, or failure to have liability insurance on a motor

vehicle, the permanent license shall be returned to the licensee at the time of reinstatement.

4.2 If the suspension of a permanent license is for a moving violation (s), the permanent license is cancelled, and at the time of reinstatement, a new driver's license shall be issued to the applicant for the balance of the period remaining on the license. The licensee shall not be required to pay for this license.

4.3 In both cases cited above, the normal reinstatement fee pursuant to 21 Del.C. §2737 shall be assessed.

5.0 Severability

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the register of Regulations in accordance with 29 Del.C. §10118(e).

2208 Concerning Driver Improvement Problem Driver Program (Formerly Reg. No. 45) (Renumbered) (7 DE Reg. 1021 (02/01/04))

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del.C. §2733(a)(4) and 29 Del.C. §10115.

2.0 Purpose

The Highway Safety Program Standard for Driver Licensing, as adopted by the National Highway Traffic Safety Administration, requires each state to have a Driver Improvement Program to identify problem drivers and take actions to reduce the frequency of their involvement in traffic accidents and violations. The Driver Improvement Problem Driver Program is designed to identify problem drivers, to change the problem driver's behavior by providing information and training opportunities and, if necessary, to progressively impose sanctions as more convictions/points are accumulated on the driving record. The goal of the program is crash prevention. The steps in the program are geared to the seriousness of the driving record.

The Division of Motor Vehicles' Driver Improvement staff uses these policy guidelines to initiate program requirements and impose license suspensions.

3.0 Applicability

This policy regulation interprets the following sections found in Title 21: Section, 2722, Section 2733(b), (e), (j), Section 2755, Section 2756, Section 4166(d), (j), Section 4169, Section 4175, 4175a, Section 4172(a), (b), Section 4172A, Section 6702, and Chapter 81.

4.0 Substance of Policy

4.1 Point System. The Division of Motor Vehicles shall identify problem drivers, educate and impose driver license sanctions based upon a point system. Violations will be assessed points based up the following:

Violations

Speeding 1-9 miles per hour over posted limit	2
Speeding 10-14 miles per hour over posted limit	4
Speeding 15-19 miles per hour over posted limit	5
Speeding 20 or more miles per hour over posted limit	5*
Passing a Stopped School Bus	6*
Reckless Driving	6
<u>Operation of a Vehicle Causing Death</u>	<u>6*</u>
Aggressive Driving	6*
Disregarding Stop Sign or Red Light	3

*May result in additional actions including suspension

4.2 Point Credits

4.2.1 A licensee who is convicted of a speeding violation from 1 – 14 miles per hour over the posted speed limit will not be assessed points for the first violation within any three (3) year period provided the ticket is paid through the Voluntary Assessment Center or Alderman's court recorded on the court disposition as a "guilty mail in".

4.2.2 Completion of the Defensive Driving Course (DDC), recognized by the Division of Motor Vehicles and approved by the Insurance Commissioner's Office will be entered on the licensee's driving record. The licensee shall have a 3-point credit entered on their driving record following satisfactory completion of the course. The licensee is responsible for enrollment scheduling and the payment of all fees associated with this course. DDC credit is effective on the date of course completion. DDC credit will not be applied retroactively once an action item is in effect.

4.2.3 The point credits listed in 4.2.2 shall not be considered when determining the eligibility of a school bus operator. To determine the point level for a school bus operator or applicant, use full point value, not calculated points, for the previous 3-year period.

4.2.4 A motor vehicle licensee shall have a one point credit entered on their driving record under the Division of Motor Vehicle Point System if a driver is convicted of a violation of 21 **Del.C.** §4176(a) or 21 **Del.C.** §4176(b) and at the time of arrest for that conviction all passengers including the driver of the vehicle were wearing seat belts. This credit shall remain on a driving record for a 1-year period. If a motor vehicle licensee has more than one conviction of 21 **Del.C.** §4176(a) or 21 **Del.C.** §4176(b) during this one year period, where at the time of arrest all passengers including the driver were wearing a seat belt, the motor vehicle licensee shall not receive an additional one point credit on their driving record for each conviction. However, the one point credit on the driving record shall be extended for one year from the date of the last conviction.

4.3 Driver Improvement Problem Driver Program. A driver enters the Driver Improvement Problem Driver Program when ~~they~~ the driver accumulates 8 calculated points based upon their driving record for the previous two years. At that time an advisory letter is sent to the driver. Studies show that early intervention with inexpensive actions reduce accidents and improves driving behavior.

4.4 Convictions received from other jurisdictions are posted to the Delaware driving record. The points will be assessed on these violations as though the offense was committed in this State in accordance with the Driver's License Compact.

4.5 The Aggressive Driving Committee, in accordance with Policy Regulation 1202, must certify all behavior modification/attitudinal driving courses. The committee has the authority to designate alternative courses to comply with the requirements of this Policy Regulation.

4.6 The actions listed below occur as calculated points are accumulated during any 24-month period. The 24-month period is computed based upon the date of the offense and "slides" forward based upon that date. The driving record will record the actions taken. The Driver Improvement Section will conduct a record review at each step in the process and schedule interviews as necessary. The action items may be processed automatically without an interview. When the calculated points fall between the threshold limits, use the action items specified in the lower level. (Example: If the driver accumulates 9 points before any action is taken, send out an advisory letter as required when they accumulate 8 points.) If the driver accumulates 12 points before the advisory letter is sent, use the action item listed for drivers with 12 points.

Calculated Points

Action Items

8	Division of Motor Vehicles advisory letter is mailed to the driver. DDC credits will not impact the issuance of an advisory letter.
12	Driver must complete an approved "behavior modification/attitudinal driving course" within 90 days after notification (unless extended by the Division). Failure to comply or upon preference of the driver, a mandatory 2 month suspension will be imposed in lieu

- of the program.
- 14 Mandatory 4 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years as of the time of reinstatement.
 - 16 Mandatory 6 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years as of the time of reinstatement.
 - 18 Mandatory 8 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years as of the time of reinstatement.
 - 20 Mandatory 10 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years as of the time of reinstatement.
 - 22 Mandatory 12 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years as of the time of reinstatement.

4.7 Serious Speeding Violations. The Division of Motor Vehicles considers all speeding violations 20 miles per hour (MPH) or more above the posted speed limit to be a serious speeding violation that identifies the driver as a problem driver. The following actions will be taken:

4.7.1 When a driver is convicted of a single speeding violation for driving 20-24 MPH over the posted limit and accumulated less than 12 calculated points, the Driver Improvement staff will review their driving record and send the driver an advisory letter.

4.7.2 When convicted of driving 25 MPH over the posted limit, the driver's license will be suspended for a mandatory period of 1 month. The suspension period will be increased by one month for each additional 5 MPH over the initial 25 MPH threshold. Note: The driver may elect to attend the "behavior modification/attitudinal driving course" in lieu of a license suspension if they were driving 25-29 MPH over the posted limit.

4.7.3 Anyone convicted of driving 50 MPH or more over the posted speed or driving 100 MPH or more shall be suspended for a period of one year. The driver is not eligible for an occupational license during the first three months of the suspension period.

4.7.4 To be eligible for reinstatement following a suspension for a serious speed violation the driver must complete or have completed a "behavior modification/attitudinal driving course" within the previous 2 years as of the time of reinstatement. However, drivers suspended in lieu of electing to attend the "behavior modification/attitudinal driving course" for speed violations 25 to 29 MPH over the posted limit are not required to complete the program at time of reinstatement.

4.8 Additional Sanctions Imposed by Statute or Policy:

4.8.1 Passing a stopped school bus in violation of 21 **Del.C.** §4166(d). For the first offense, one-month driver's license suspension. For the second offense, six months suspension. For the third or more offenses, suspend the driver's license for twelve months.

4.8.2 Driving in violation of a license restriction per 21 **Del.C.** §2722. For the first offense, send an advisory letter. Suspend the driver's license for one month for subsequent offenses.

4.8.3 Speed exhibition violation per 21 **Del.C.** §4172(a)(d). One-month suspension for the first offense and one-year driver's license suspension for subsequent offenses.

4.8.4 Spinning wheels violation per 21 **Del.C.** §4172(b). Send an advisory letter for the first

offense. Suspend the driver's license for one year for second and subsequent offenses.

4.8.5 Malicious mischief violations per 21 **Del.C.** §4172A. One-month driver's license suspension for the first offense. One-year suspension for the second and subsequent offenses.

4.8.6 Knowingly permit an unlicensed person to operate a vehicle violation per 21 **Del.C.** §2755. Send an advisory letter for the first offense. Three-month driver's license suspension for the second and subsequent offenses.

4.8.7 Driving without consent of the owner violation per 21 **Del.C.** §6702. One month driver's license suspension for the first offense and three month's suspension for the second and subsequent offenses.

4.8.8 Driving during suspension or revocation violations per 21 **Del.C.** §2756. A conviction for driving during suspension or revocation shall extend the period of the suspension or revocation for a like period not to exceed 12 months. No driving authority will be permitted during the balance of the initial suspension or revocation period and the extended period. Any driving authority previously issued by the Division must be surrendered.

Note: For ~~violations~~ purposes of 4.8.3, 4.8.4 and 4.8.5 to be considered a subsequent offense, the violations must be under the same subsection and cannot be a combination of violations such as Sections 4172(a) and Section 4172(b). To be considered a second or subsequent offense, the convictions must be within the previous three years.

4.9 Occupational License. In the event of a suspension of a driver's license ~~pursuant to this policy regulation~~, the Division may issue an occupational license during the period of suspension if the applicant stipulates the suspension has created an extreme hardship. However, no such occupational license shall be issued if the applicant has two previous suspensions ~~under the policy regulation~~ within the previous 3 years, or if the suspension is for physical and/or mental disability, if the suspension and/or revocation action is based on a fatal motor vehicle accident, or if the license is revoked for convictions of any crimes specified in Section 2732 of Title 21 even though it causes an extreme hardship. Any driver convicted of operating a motor vehicle in violation of the restrictions imposed by the occupational license shall immediately extend the suspension period for an additional like period not to exceed 12 months and shall direct the driver to surrender ~~their~~ the driver's occupational license. No more than one occupational license under this policy shall be issued within any 12-month period.

4.10 Hardship licenses (21 **Del.C.** §2751) permit the operation of a motor vehicle between the driver's residence and place of employment and for operating vehicle on the job as a part of their employment.

4.11 Conditional and occupational licenses normally permit the operation of a motor vehicle between the driver's residence and place of employment, for operating a motor vehicle as a part of their employment duties, to and from school and child/adult care facilities and for medical appointments.

4.12 Drivers suspended under this program are ineligible for an occupational license for one month. If the calculated point level reaches 15 or more points in a 24-month period, an occupational license will not be issued until the calculated points are less than 15 points.

4.13 Calculated Points. For the purposes of this Policy Regulation, calculated points are credited at full point value for the first twelve months from the date of the violation. After the initial 12 months have expired, the calculated points will be credited at (1/2) point value for the next 12 months. The Division will only take action based upon convictions accumulated within the 24-month period following the date of the offense.

4.14 Moving Violations. Those violations contained in 21 **Del.C.** Ch. 27, 41 and 42, excluding those violations that require mandatory suspension or revocation actions. Multiple violations occurring within a 24-hour period shall be considered individual violations for the purposes of this policy regulation.

4.15 Advisory Letter. The Division will send an advisory letter to those drivers who accumulate 8 calculated points or ~~when are~~ are convicted of speeding 20-24 MPH over the posted limit. The purpose of the advisory letter is to express our concern about the operator's driving habits and their impact upon highway safety. The letter will inform the driver about the Driver Improvement Problem Driver Program. An advisory letter may be sent for both point accumulations and excessive speed violations.

4.16 Record Review. The goal of the record review is to assess any problems the driver may have and require a course of action. The record review may result in a driver improvement interview/counseling session, medical or vision examination, knowledge and/or skills testing, restricted license, license suspension or the surrender of a license.

4.17 Interviews. The Driver Improvement staff may schedule the driver to attend an interview based upon the record review. The licensee may request an interview with a Driver Improvement Officer or staff member when notified of pending action against them. The following issues are open to discussion:

4.17.1 The driver may request an additional 90 days to complete a mandatory attendance at the "behavior modification/attitudinal driving course" or ~~they~~ the driver may request a license suspension in lieu of attending the program. Any further delays in completing the program must be approved by the Driver Improvement Manager or the Chief of Driver Services.

4.17.2 The driver can present evidence that the convictions on their driving record belong to another driver. If proven, the convictions will be removed.

4.17.3 If the violation on record is under appeal by the court, the driver must submit a copy of the appeal bond and the violation will be removed from the driving record. If applicable, the suspension action resulting from this violation is to be removed from the driving record.

4.17.4 The Driver Improvement staff may require the driver to complete a medical or vision examination, pass a knowledge or skill test or restrict ~~their~~ the driver's driving privileges based upon the results of the interview.

4.18 This policy regulation shall have no effect on the revocation actions, medical qualifications or requirements, or suspension action required by statute unrelated to this policy.

7 DE Reg. 524 (10/1/03)

7 DE Reg. 1017 (2/1/04)

5.0 Severability

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 **Del.C.** §10118(e).

2210 Issuance of a Conditional License as the Result of a Suspension Due to a Conviction for Passing a Stopped School Bus. (Formerly Reg. No. 57)

~~Whereas, Title 21, Subchapter VII, Section 4166(i), states:~~

~~"...If the driver's license is suspended, a conditional license may be issued pursuant to regulations adopted by the Department."~~

~~The following policy regulation is hereby adopted:~~

~~(a) No conditional license shall be issued if the licensee has been issued an occupational or a conditional license within the preceding twelve months.~~

~~(b) No conditional license shall be issued to drive a school bus.~~

~~(c) The Department, upon receiving a record of conviction of any person upon a charge of operating a motor vehicle in violation of the conditions imposed upon said conditional license during the period of such conditional license, shall immediately extend the period of such suspension for an additional like period and shall forthwith direct such person to surrender said conditional license to the Department.~~

1.0 Authority

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §4177(j) and 29 **Del.C.** §10115.

2.0 Purpose

This policy regulation establishes administrative procedures regarding the issuance of a conditional license following a suspension action due to a conviction for passing a stopped school bus in violation of 21 **Del. C.** §4166(d).

3.0 Applicability

This policy regulation interprets the following sections found in 21 **Del.C.** §4166

4.0 Substance of Policy

4.1 Upon receiving a notice of conviction for a violation of 21 **Del.C.** §4166(d) the driver's license and/

or driving privilege shall be suspended for a period of one (1) month for a first offense.

4.2 Upon receiving a notice of conviction for a second violation of 21 Del.C. §4166(d) within three (3) years of a prior violation, the driver's license and/or driving privilege shall be suspended for a period of six (6) months.

4.3 Upon receiving a notice of conviction for a third or further subsequent violation of 21 Del.C. §4166(d) within three (3) years of a prior violation, the driver's license and/or driving privilege shall be suspended for a period of one (1) year.

4.4 In the event of a suspension of a driver's license pursuant to this policy, the Division may issue a conditional license during the period of suspension if the applicant stipulates the suspension has created an extreme hardship, such as loss of meaningful employment opportunity or loss of school opportunity.

4.4.1 A minimum suspension period of one (1) month must be served without driving authority if the suspension action is processed based on (4.1) above.

4.4.2 A minimum suspension period of three (3) months must be served without driving authority if the suspension action is processed based on (4.2) above.

4.4.3 A minimum suspension period of six (6) months must be served without driving authority if the suspension action is processed based on (4.3) above.

4.5 However no such conditional license shall be issued if the licensee has been issued an occupational license or a conditional license within the preceding twelve (12) months or has previously been issued a total of three (3) occupation or conditional licenses as shown on the licensee's driving record.

4.6 The Department, upon receiving a record of conviction of any person upon a violation of operating a motor vehicle in violation of the condition imposed upon said conditional license during the period of such conditional license, shall immediately extend the period of such suspension for an additional like period and shall forthwith direct such person to surrender said conditional license to the Department.

5.0 Severability

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the register of Regulations in accordance with 29 Del.C. § 10118(e).

2211 The Issuance of Restricted Driving Privileges as the Result of a Suspension or Revocation Order Received from Family Court Relative to a Juvenile Being in Violation of 21 Del.C. 4177. (Formerly Reg. No. 63)

Pursuant to Title 10, Section,937 (c) 1009(f), the following Policy Regulation is hereby adopted:

1- Requests for restricted driving authority pertaining to employment must be accompanied by a notarized statement from the employer stating that no authority to drive would result in the loss of a meaningful employment opportunity.

2- Requests for restricted driving privileges pertaining to attending school must be accompanied by a notarized statement from an official of the school stating that no authority to legally drive would result in the loss of a school opportunity.

3- Requests for restricted driving privileges for any other urgent need of the individual must be accompanied by a notarized statement from a member of the immediate family stating that no member of the immediate family is capable of satisfying such urgent need.

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del.C. §4177, 10 Del.C. §1009(f) and 29 Del.C. §10115.

2.0 Purpose

This policy regulation establishes administrative procedures regarding the issuance of restricted driving

privileges following a suspension or revocation order received from Family court relative to a juvenile being in violation of 21 Del.C. §4177.

3.0 Applicability

This policy regulation interprets the following sections found in 21 Del.C. §4177, §4177B, and 10 Del.C. §1009(f).

4.0 Substance of Policy

4.1 Requests for restricted driving authority pertaining to employment must be accompanied by a notarized statement from the employer stating that no authority to drive would result in the loss of a meaningful employment opportunity.

4.2 Requests for restricted driving privileges pertaining to attending school must be accompanied by a notarized statement from an official of the school stating that without the authority to drive a loss of a school opportunity would result.

4.3 Requests for restricted driving privileges for any other urgent need of the individual must be accompanied by a notarized statement from a member of the immediate family stating that no member of the immediate family is capable of satisfying such urgent need.

5.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the register of Regulations in accordance with 29 Del.C. §10118(e).

2212 Issuance of Occupation Driver's License After Conviction of No Insurance on a Vehicle (Formerly Reg. No. 78

~~Pursuant to 21 Del.C. §.302 and 21 Del.C. §2118(g), the following policy regulation is effective immediately:~~

~~In the event of a suspension of a driver's license pursuant to the provisions of 21 Del.C. §.2118, the suspended person may be issued an occupational license during the suspension period provided:~~

- ~~1. The applicant has not been issued an occupational license during the immediate past 12 months.~~
- ~~2. The applicant demonstrates that the suspension of license has created an extreme hardship.~~

~~Extreme hardship shall include:~~

- ~~(1) loss of a meaningful employment opportunity; or~~
- ~~(2) loss of a school opportunity; or~~
- ~~(3) any other urgent need within the family which is critical to the family's health or welfare and no other member of the family is realistically capable of satisfying such urgent need.~~

~~3. Requests for restricted driving authority pertaining to employment must be accompanied by a statement from the employer stating that no authority to drive would result in the loss of a meaningful employment opportunity.~~

~~4. Requests for restricted driving privileges pertaining to attending school must be accompanied by a statement from an official of the school stating that no authority to legally drive would result in the loss of a school opportunity.~~

~~5. Requests for restricted driving privileges for any other urgent need of the individual must be accompanied by a statement from a member of the immediate family stating that no member of the immediate family is capable of satisfying such urgent need.~~

~~6. The applicant provides "proof of insurance" for all vehicles registered under the applicant's name and for all vehicles registered under the spouse's name. This includes any vehicle being used for~~

~~transportation to and from work. This proof must be a letter from the insurance company or agent, on the company's letterhead, stating that such insurance is valid at least through the 3 month suspension period. A normal insurance ID card is unacceptable for this purpose.~~

~~7. The applicant provides "proof of insurance" for any vehicle listed to be operated by the applicant during his/her employment.~~

~~8. The applicant is not under a suspension or revocation of his/her driving privileges for another reasons) at the time.~~

~~9. The applicant was not involved in an accident at the time of the incident, in which property damage or personal injury occurred.~~

~~An occupational license issued pursuant to this policy regulation shall reflect limited authority to drive for occupational purposes only.~~

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del.C. §2118, and 29 Del.C. §10115.

2.0 Purpose

This policy regulation establishes administrative procedures used to issue occupational driving authority following conviction of failure to have insurance or failure to display an insurance ID card.

3.0 Applicability

This policy regulation interprets the sections found in 21 Del.C. §2118(a) through (z) in their entirety.

4.0 Substance of Policy

In the event of a suspension of a driver's license pursuant to the provisions of 21 Del.C. Section 2118, the suspended person may be issued an Occupational License during the mandatory period of suspension. The applicant is eligible to apply provided:

4.1 The applicant was not involved in an accident at the time of the incident in which property damage or personal injury occurred

4.2 The applicant has not been issued an occupational license during the immediate past 12 months. (Not to include conditional licenses issued under 21 Del.C. §4177(E), §4177(K), or 16 Del.C. §4764 Drug Diversion.)

4.3 The applicant is not under suspension or revocation of his/her driving privileges for another reason at time of application that would preclude the issuance of driving authority.

4.4 All valid Delaware licenses are turned in to the Division.

4.5 The applicant states on the application that the loss of license would create an extreme hardship which shall be defined as:

4.5.1 Loss of meaningful employment opportunity;

4.5.2 Loss of a school opportunity; or

4.5.3 An urgent need by the applicant or within the family, which is critical to the families' health or welfare, and no other family members are capable of satisfying such urgent need. This includes; medical facilities, child, or adult care facilities.

4.6 An occupational license issued pursuant to this Policy Regulation shall reflect limited driving authority to drive for the above state reasons only. The occupational license shall be issued for the duration of the suspension period or the expiration of the license whichever is greater. The applicant may choose to renew the license prior to issuance of the occupational license or may complete the renewal process at a later time.

4.7 In order to apply for an Occupational License, applicant must provide the following:

4.7.1 Employment

4.7.1.1 Proof of insurance on all vehicles registered in the name of the applicant and/or spouse, or the name of another, and/or on company owned vehicles. (See Proof of Insurance).

4.7.1.2 If self employed, a copy of the applicant's business license must be provided and the copy remain on file with the application.

4.7.1.3 If driving vehicles owned by the employer, a statement from the employer stating:

4.7.1.3.1 Applicant is employed with the company.

4.7.1.3.2 Applicant's work days and hours.

4.7.1.3.3 If applicant needs to drive for employment related duties.
 4.7.1.3.4 Applicant will be driving company owned vehicles. (Please identify the vehicles).
 4.7.1.3.5 If applicant will be driving a personal or other vehicle in addition to the company vehicle for these duties.
 4.7.2 Attending School
 4.7.2.1 Documentation on the application stating the name, address, and phone number of the facility.
 4.7.2.1.1 Days and hours applicant is scheduled for classes; and
 4.7.2.1.2 Loss of school opportunity if applicant is not granted authority to drive.
 4.7.2.2 Proof of insurance on all vehicles registered in the name of the applicant and/or spouse, or the name of another, and/or on company owned vehicles. (See Proof of Insurance)
 4.7.3 Child or Adult Care Requests
 4.7.3.1 Documentation on the application stating the name, address, and phone number of the facility.
 4.7.3.2 Proof of insurance on all vehicles registered in the name of the applicant and/or spouse, or the name of another, and/or on company owned vehicles. (See Proof of Insurance)
 4.7.4 Medical Requests
 4.7.4.1 statement on the application that no other means of transportation is available
 4.7.4.2 Documentation on the application stating the name, address, and phone number of the physician or medical facility.
 4.7.4.3 Proof of insurance on all vehicles registered in the name of the applicant and/or spouse, or the name of another, and/or on company owned vehicles. (See Proof of Insurance)
 4.7.5 Proof of Insurance
 4.7.5.1 Privately Owned vehicles
 4.7.5.1.1 Applicant's vehicles and/or vehicles where applicant's name is on the policy a valid insurance ID card must be shown.
 4.7.5.1.2 Vehicle owned by the applicant's spouse and/or other vehicles personally owned by another individual must submit a valid insurance ID card.
 4.7.5.2 Employers/Company Owned Vehicles
 4.7.5.2.1 Applicants requiring the privilege to drive their employer's vehicles for occupational purposes must present the employer's insurance ID or fleet ID card for proof of insurance.
 4.7.5.2.2 If the business is privately owned and the insurance is issued under the employer's personal policy, the applicant must provide a valid insurance ID card.
 4.7.6 Proof of Insurance that is not acceptable
 4.7.6.1 Faxed copies of insurance documents unless faxed directly to the Division office

5.0 Severability

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the *Register of Regulations* in accordance with 29 **Del.C.** §10118(e).

2259 Mopeds (Formerly Regs. No. 24 and 26)

1.0 Authority

Pursuant to Sections 101 and 4194A 4198M, Title 21, **Delaware Code**, the following regulations are hereby adopted.

2.0 Mopeds

- 2.1 Manufacturer's Statement of Origin must be presented to the Division at the time application for registration is submitted.
- 2.2 Manufacturer's Statement of Origin must include:
- 2.2.1 Manufacturer's name
 - 2.2.2 Year of manufacturer
 - 2.2.3 Vehicle identification or serial number
 - 2.2.4 Maximum piston displacement less than 55cc.
 - 2.2.5 Brake horsepower rated at no more than 2.7
 - ~~2.2.6 Maximum speed obtainable 25 m.p.h.~~
 - 2.2.6 Name and address of manufacturer.
- 2.3 Certificate of title will be issued, same as on other vehicles. Fee for the title will be the same.
- 2.4 Vehicle document fee must be paid, same as on all other vehicles.
- 2.5 Registration card will be issued, same as on other vehicles.
- 2.6 Fee for registration is \$5.00 and shall be valid for 3 years. A moped license plate will be issued and has to be displayed on the rear of the moped so it is clearly visible. All moped registrations will expire on December 31st.
- 2.7 Records shall be maintained on the vehicle computer files, same as all other vehicles.
- 2.8 Duplicate title and duplicate registration card fees are the same.
- 2.9 No inspection of the vehicle is required for mopeds purchased in Delaware unless supporting ownership papers are in question. (For ~~serial VIN~~ inspection only). Mopeds purchased out of state must be presented for inspection of the ~~Vehicle Serial Number VIN~~.
- 2.10 Liens can be recorded, same as on all other vehicles.
- 2.11 No insurance is required.
- 2.12 No helmet is required by operator.
- 2.13 Operator must hold a valid driver's license. The license does not have to be endorsed for a motorcycle. License must always be in possession of operator when moped is being operated.
- 2.14 Regulations applicable to bicycles shall apply whenever a moped is operated upon any public road or upon any path set aside for the exclusive use of bicycles.
- 2.15 Mopeds shall not be operated on:
- 2.15.1 interstate highways, such as I-95
 - 2.15.2 limited access highways
 - 2.15.3 the right of way of an operating railroad.
 - 2.15.4 any path set aside for the exclusive use of bicycles unless the helper motor has been turned off.
- 2.16 The Department having no reliable method to determine the maximum speed of a moped will use the maximum piston displacement and brake horsepower to determine if the vehicle is a moped or a motorcycle.

3.0 Registration and Licensing

3.1 Due to numerous inquiries from non residents concerning what Delaware will legally recognize for the operation of mopeds, the following information is provided:

Resident of	Moped Must Be Registered	Operator Must Hold A Valid Driver's License
Delaware	Yes	Yes
Maryland	No	Yes
Virginia	No	Yes
New Jersey	No Yes	Yes
Pennsylvania	Yes	Yes
District of Columbia	Yes	Yes
North Carolina	No	Yes
South Carolina	No	Yes

3.2 Of the above, only the states of Delaware, Maryland, Pennsylvania and District of Columbia

actually have laws requiring the operator of a moped to be a licensed driver. But as a matter of policy, so as to be consistent with the intent of Title 21, Section 4194A(b) 4198M all moped operators must hold valid drivers' licenses when such mopeds are being operated in the State of Delaware.

3.3 Delaware will honor the law of the home state of the moped in regards to the registration of such vehicle. However, the operator of a moped must hold a valid driver's license from his state of residence, regardless of the law in the resident's home state.

3.4 State of residence may be determined by witnessing the driver's license of the operator of the moped.

2277 Approved Tinting for Side Windows (Formerly Reg. No. 76)

1.0 Introduction

Whereas, 21 **Del.C.** §. 4313 was amended in June, 1990, to read as follows:

§4313. Altering Windshield, Front Side Windows, and Side Wings

1.1 No person shall operate any motor vehicle on any public highway, road, or street with the front windshield, the side windows to the immediate right and left of the driver, and/or side wings forward of and to the left and right of the driver that do not meet the requirements of Federal Motor Vehicle Safety Standard 205 in effect at the time of its manufacture.

1.2 Nothing in this section shall prohibit the use of any products or materials along the top edge of the windshield so long as such products or materials are transparent and do not encroach upon the AS-1 portion of the windshield as provided by FMVSS 205 and FMVSS 128"; and

1.3 No person shall operate any motor vehicle on any public highway, road, or street which does not conspicuously display a certificate by the manufacturer of any "after manufacture" window tinting material which may have been installed that such window tinting material meets the requirements of Federal Motor Vehicle Safety Standard 205 in effect at the time of the vehicle's manufacture. It shall be a valid defense to any charge under this subsection if the person so charged produces in court a validated Mandatory Inspection Notice showing that the Division of Motor vehicles has examined the motor vehicle since the date of offense and certifies compliance with FMVSS 205."

2.0 Authority

Whereas, the Department of Transportation needs a more definitive method in which to determine which products or materials are acceptable at the time of the vehicle safety inspection, and to assist police officers in enforcing the law, the following Policy Regulation is adopted pursuant to 21 **Del.C.** §302.

3.0 Glass Coating Material on Motor Vehicles

3.1 The following regulations establish standards and specifications for the use of glass coating material and sun screening devices:

3.1.1 Glass coating material placed, displayed, installed, affixed, or applied upon the windshield of a motor vehicle shall not extend below the AS -1 portion of the windshield as provided by FMVSS 205 and FMVSS 128. The material shall not extend more than five (5) inches down from the uppermost part of the windshield on older vehicles where no AS - 1 mark is indicated on the windshield.

3.1.2 The front side wing vents and windows to the immediate right and left of the driver must comply with the requirements of Federal Motor Vehicle Safety Standard 205. Glass coating material (film tint), when used in conjunction with glazing (vehicle glass) material, must provide a light transmission of not less than 70 percent. All specifications in this rule shall be within normal manufacturer's tolerance, i.e., $\pm 3\%$.

~~(3) Each manufacturer shall provide conspicuous label with a means for permanent and legible installation between the material and each front side window. The label shall contain the following information: Manufacturer (name or registration number) and statement "Complies with FMVSS 205".~~

3.1.3 Rear window or windows may be applied with glass coating material in conjunction with glazing (vehicle glass) if the motor vehicle is equipped with outside mirrors on both left and right hand sides of the vehicle.

3.1.4 Rear window mounted brake lights on 1986 and later vehicles will be clear of any tint material.

3.1.5 The law applies to all motor vehicles which are operated on the roads and highways in this

State, regardless of where such vehicles are registered. ~~Division of Motor Vehicles will issue violation warning notices to a vehicle owner in violation of this law until January 1, 1991. After that time, vehicles in violation of the law will not be passed at time of safety inspection.~~

2286 Transferring Titles with Multiple Names

1.0 Authority

Whereas, the Department of Transportation needs a definite method to determine how vehicle titles should be transferred and issued in accordance with 21 Del.C. Chapters 23 and 25, the following policy regulation is adopted pursuant to 21 Del.C. §302.

2.0 Title Transfers

2.1 A vehicle title in two or more names using the word "and" between the names requires all owners to sign the appropriate blocks on the back of the title to transfer the title.

2.2 A vehicle title in two or more names using the words "and/or" between the names only requires one owner to sign the appropriate blocks on the back of the title to transfer the title.

2.3 A vehicle titled in two or more names using the word "and" between the names where one owner is deceased requires the surviving owner(s) to present a copy of the executor or administrator papers to drop the deceased owner's name from the title or to transfer the title to a new owner. In the event an individual other than the surviving owner(s) is the executor or administrator of the estate, the title may not be transferred without the surviving owners' signatures and the executor's or administrator's signature in the appropriate blocks.

3.0 Duplicate Titles

Duplicate title applications must be signed by all owners before a duplicate title will be issued regardless of whether the title has the words "and" or "and/or" between the owners' names.

4.0 Leased Vehicles

Leased vehicles owned by a leasing company and leased to a lessee with the right to purchase will be titled in the name of the leasing company "C/O" the lessee.

5.0 Transfers Involving Divorced Owners

5.1 The Division will transfer a vehicle title with the names separated by "and" to a divorced owner when the divorce decree incorporates the division of assets and identifies who receives the vehicle. A division of assets may not be incorporated into the divorce decree, but it may still be a valid agreement between the parties regarding the transfer of marital property to one party or the other. A division of assets that is not incorporated into a divorce decree may be acceptable as long as both parties signed the agreement, the agreement is notarized, and the agreement clearly identifies the vehicle and which party is to receive the vehicle. The divorced owner who received the vehicle in the division of assets only needs to sign the back of title to transfer the title or drop the other party's name. In the absence of any division of assets, both parties must sign the title when a vehicle is titled using the word "and" between the parties' names.

9 DE Reg. 1541 (04/01/06) (Prop.)