

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302, (21 **Del.C.** §302)
2 **DE Admin. Code** 2201

FINAL

2201 Procedure for Re-licensing Investigations Character Background Review

ORDER

Proposed Regulation 2201 establishes administrative procedures regarding the character background review process for an individual whose license has been revoked for an alcohol-related violation pursuant to 21 **Del.C.** §2742, §2743, and §4177. The proposed regulation was published in the *Delaware Register of Regulations* on January 1, 2010. The comment period remained open until January 31, 2010. There was no public hearing on proposed Regulation 2201.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law.
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302, §2742, §2743, and §4177, and the record in this docket, I hereby adopt Regulation 2201 and as may more fully and at large appear in the version attached hereto to be effective on March 10, 2010.

Text and Citation

IT IS SO ORDERED THIS 23rd day of February 2010.

Carolann Wicks, Secretary of Transportation

2201 Procedure for Re-licensing Investigations Character Background Review

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administrative procedures regarding the character background review process for an individual whose license has been revoked for an alcohol-related violation pursuant to 21 **Del.C.** §2742, §2743, and §4177. Additionally, pursuant to 21 **Del.C.** §4177 A(d), the Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked until such person has satisfied the Secretary that he/

she has been of good behavior for the entire period of revocation and until he/she has complied with all applicable provisions of this section.

3.0 Applicability

This policy regulation interprets the following sections found in 21 **Del.C.** §2742, §2743, and §4177.

4.0 Substance Of Policy

- 4.1 ~~Driver Improvement staff members designated to interview, receive reference information and make a determination regarding issuance of driving authority include:~~ Any Driver Improvement staff member acceptable to the Secretary of Transportation or his designee may conduct a character background review in accordance with this regulation.
 - 4.1.1 ~~Driver Improvement Manager~~
 - 4.1.2 ~~Driver Improvement Assistant Manager – Hearing Officer~~
 - 4.1.3 ~~Driver Improvement Hearing Officer~~
 - 4.1.4 ~~Driver Improvement Officer~~
 - 4.1.5 ~~Motor Vehicle Support Supervisor – Revocations~~
 - 4.1.6 ~~Motor Vehicle Support Supervisor – Suspensions~~
- 4.2 The following individuals are required to have a favorable ~~C~~character Bbackground Rreview conducted prior to becoming eligible to reinstate his driving privileges:
 - 4.2.1 Any person whose blood alcohol content (BAC) at the time of arrest was .165 or above.
 - 4.2.2 Any person revoked for a second alcohol-related violation pursuant to 21 **Del.C.** §2742, §4177, or §4177B occurring within five (5) years from the first violation and/or third or further subsequent alcohol-related violation occurring at any time following the second violation.
 - 4.2.3 Any person revoked for a felony alcohol-related violation pursuant to 21 **Del.C.** §2742 or §4177.
- 4.3 ~~To begin the review process the applicant must request an application from the Division of Motor Vehicles, Revocation Section, Administration Office, Dover. The application may be mailed to the applicant when he/she is within 60 days of the eligibility date for any type of driving authority and the applicant must have satisfactorily completed the alcohol program as required pursuant to 21 **Del.C.** §4177D.~~
- 4.4 ~~The applicant must contact the assigned Driver Improvement staff member at the phone number listed on the application to make an appointment for an interview.~~
- 4.5 ~~The applicant will be assigned to a Driver Improvement staff member at a Motor Vehicle Facility within the county of the applicant's residence.~~
- 4.6 ~~The applicant must provide on the application, the name, address, and phone number of six individuals who will serve as a reference for the applicant. These persons must be individuals who have frequent contact with the applicant and who see the applicant on a regular basis. One reference may be a relative of the applicant. Other references may include but are not limited to: neighbors, friends, co-workers, religious leader. Employees of the Department of Transportation may not be listed or accepted as a reference.~~
- 4.7 ~~The Driver Improvement staff member shall mail a reference questionnaire to all six references listed on the application. The reference shall be given two (2) weeks to return the reference questionnaire to the Driver Improvement staff member. All reference questioners must be signed by the reference and notarized. Questionnaire that are not signed and/or not notarized will not be accepted.~~
- 4.93 The Driver Improvement staff member shall review Delaware Justice Information System/Criminal Justice Information System (DELJIS/CJIS) and driving record regarding violations of the applicant. Violations received after the violation for which the character background review is being conducted that result in a conviction and/or violations currently pending should be addressed with the applicant and may be taken into consideration when making the decision regarding issuance of any driving authority.

- 4.404 ~~The Driver Improvement staff member shall obtain a Problem Driver Pointer System (PDPS) printout prior to the applicant interview reinstating an applicant's driving privileges. A second PDPS print shall be made prior to the final decision regarding issuance of driving authority. The PDPS information, i.e.: "eligible" or "not" eligible shall be included on the decision form. An applicant must have a PDPS status of "eligible", thus indicating that his driving privileges are not withdrawn in any other state, prior to becoming eligible for valid driving privileges.~~
- 4.445 It is the responsibility of the Driver Improvement staff member to determine whether or not driving authority should be reinstated and how such authority should be limited based on statute requirements. (IE: full driving authority, conditional license or IID license.)
- 4.86 The Driver Improvement staff member may contact any other sources which could supply information relative to the applicant's case. These additional sources may include, but not be limited to: probation officer, alcohol program instruction, alcohol program counselor, court staff, police agency in or around the applicant's place of residence, or any citizen that may be aware of the applicant's current drinking behavior.
- 4.427 If the Background Review reveals that the applicant may constitute a risk to the driving public relative to alcohol and/or drug abuse and/or that the applicant has not been of "Good Behavior", his/her driving privilege will not be reinstated. Such driving authority will remain withdrawn until it has been determined by this Division that all applicable requirements have been met and that the applicant no longer represents a risk to the driving public.
- 4.13 ~~The Driver Improvement staff member in the best interest of the applicant may recommend a follow-up evaluation to determine if further treatment may be needed. A copy of the "Alcohol & Drug Prevention and Treatment Information" sheet will be mailed to the applicant along with the letter regarding the Driver Improvement staff member's decision regarding driving authority.~~
- 4.447.1 For purposes of this ~~Policy Regulation~~ "Good Behavior" shall be defined by the Department as:
- 4.14.1 ~~No excessive and/or abnormal abuse of alcohol and/or other drugs during the period of revocation.~~
- 4.44.27.1.1 No additional drinking and/or drug-related incidents caused by the applicant during the period of revocation (included but not limited to arrests).
- 4.44.37.1.2 No traffic (moving) or license violations during the period of revocation.
- 4.14.4 ~~Favorable references from no less than three (3) individual references.~~
- 4.458 The applicant shall be denied driving authority until the applicant has satisfactorily completed all necessary requirements as defined by Delaware statute and this regulation.
- 4.8.1 The Driver Improvement staff member having information regarding an applicant's behavior regarding those items listed ~~above~~ in 4.7.1 may deny driving authority for one (1) month for the first action, three (3) months for two actions, and six (6) months for three or more actions.
- 4.468.2 Once additional time has been served, a prior violation will not be considered. However, if new violations are received during the denial period, the Driver Improvement staff member shall take the new violations into consideration as specified in ~~4.14~~ 4.7.1 above.
- 4.17 ~~The Driver Improvement staff member will mail the decision letter to the applicant regarding the issuance of driving authority based on the character background review no more than 30 days from the date of the initial interview.~~
- 4.489 Following the Character Background Review the Driver Improvement staff member will file a report of his/her decision regarding issuance of driving authority. ~~along with a copy of the decision letter~~
- 4.4910 ~~Upon receipt of the character background decision, a~~n entry will be made to the driving record regarding the outcome of the Character Background Review.
- 4.2011 All documents will be imaged upon receipt in the ~~Revocation~~ Driver Improvement Section.
- 4.21 ~~If the applicant is not able to provide sufficient references, in lieu of the reference statements the applicant may have an alcohol evaluation by a licensed and approved alcohol treatment referral listing. The applicant would be required to abide by the evaluation and complete any additional recommended~~

~~treatment. If no treatment is recommended, the applicant would be approved for the type of driving authority currently eligible.~~

4.2212 Any person whose blood alcohol concentration (BAC) at the time of arrest was below .165 and/or whose arrest was his/her first alcohol-related violation shall be processed pursuant to the following:

4.2212.1A review of the driving record and PDPS will be conducted to determine eligibility for driving authority.

4.2212.2A review of the alcohol program completion will be conducted to verify acceptable completion of the program.

~~4.22.3 No personal interview or contact of references will be required.~~

4.2313 If the applicant is refused issuance of a driver's license after the period of revocation has ended the alcohol program has been satisfactorily completed and after all fines and/or fees are paid, the applicant may appeal to the ~~Superior Court~~ of Common Pleas in the county of his/her residence.

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).

13 DE Reg. 1225 (03/01/10) (Final)