Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Statutory Authority: 18 Delaware Code, Section 2503; 21 Delaware Code, Section 302
(18 **Del.C.** §2503; 21 **Del.C.** §302)

FINAL

ORDER

2224 Defensive Driving Course, Providers, and Instructors

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Proposed Regulation 2224 relating to Defensive Driving Course, Providers, and Instructors was published in the Delaware *Register of Regulations* on January 1, 2015. This proposed Regulation 2224 is pursuant to Senate Bill 178 with Senate Amendment 1 of the 147th General Assembly, which transfers the authority to regulate Delaware's state-approved defensive driving courses from the Department of Insurance to the Division of Motor Vehicles, with the exception of the regulatory authority over the insurance discount, as required by the program, which remains under the Department of Insurance.

Written comments were to be accepted regarding this proposal until January 30, 2015. There was no public hearing on proposed Regulation 2224. Public notice of the proposed Regulation 2224 was published in the *Register of Regulations* in conformity with Delaware Law.

No written comments were received on the proposed Regulation 2224. No amendments or changes were made to the proposed Regulation 2224.

EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

TEXT AND CITATION

The text of proposed Regulation 2224 last appeared in the *Register of Regulations* Vol. 18, Issue 7, pages 540-545.

IT IS SO ORDERED this 20th day of February, 2015

Jennifer Cohan, Secretary
Department of Transportation

2224 Defensive Driving Course, Providers, and Instructors

1.0 Purpose and Authority

The purpose of this Regulation is to provide criteria for certification of Motor Vehicle Accident Prevention Courses, commonly referred to as Defensive Driving Courses (hereinafter "DDC") and Instructors. This Regulation is adopted pursuant to 18 **Del.C.** §2503(6). The authority to promulgate is in accordance with 21 **Del.C.** §302 and the procedures specified in the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

2.0 Definitions

"**Classroom courses**" for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aids or materials.

"**Division**" means the Delaware Division of Motor Vehicles

"**Instructors**" means those who are authorized to instruct course material for certified DDC courses offered by Providers.

"**On-line courses**" for the purpose of this regulation means instruction provided online or offline through the use of a computer (or digital reader) including the use of CD-ROMS or similar pre-recorded media or websites.

"**Providers**" means corporate sponsor for any course as well as the individual who signs the application for the course.

3.0 Certification Criteria for Defensive Driving Course

3.1 Each provider of a defensive driving course that seeks certification of that course by the Division shall submit to the Division for approval the following materials:

3.1.1 All written instructor materials, testing materials and curricula utilized for classroom instruction.

3.1.2 All written materials provided to students in connection utilized for classroom instruction.

3.1.3 Identity and qualifications of all Instructors.

3.1.4 All curricula and testing material used in connection with an on-line course.

3.1.5 All materials available to students in connection with an on-line course.

3.1.6 All testing and grading criteria used in an on-line course.

3.1.7 Identity and qualifications of persons available to answer student questions respecting content and technical support for an on-line course.

3.2 The course materials for each defensive driving course shall include, at a minimum, the following:

3.2.1 State of Delaware traffic laws, defensive driving and collision prevention techniques/theory.

3.2.2 A discussion of vehicle safety devices, including the requirement for and use of seat belts, child restrain t devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems with special attention to proper passenger seating and proper use of anti-lock breaking systems and how they compare to standard braking systems;

3.2.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs, as well as Dela ware "Zero Tolerance" for drivers under 21;

3.2.4 A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:

3.2.4.1 The condition of the driver, the vehicle, the road, sun glare, weather, such as rain, fog, sleet, hail and snow, and lightening;

3.2.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, and DVDs, talking with a passenger, reading, eating, billboards, and other roadside distractions;

3.2.5 A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, roundabouts, stopping at railroad crossings, right-of-way and traffic devices, pavement line markings, blind spots, as well as situations involving passing and being passed and head-on collisions; and

3.2.6 Consideration of the hazards and techniques of various driving situations such as, but not limited to, city, highway, expressway and rural diving, proper use of exit and entrance ramps, driving in parking lots.

3.2.7 A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include how to identify oneself as an aggressive driver and the appropriate manner to respond.

3.2.8 Speed limits

3.2.9 School buses

3.2.10 Emergency vehicle right of way

3.2.11 Turn signals/Turning maneuvers

3.2.12 Headlight usage

3.2.13 Motorcycle

3.2.14 Pedestrian

3.2.15 A discussion of the 10% and 15% premium discounts as well as the 3 point Division credit.

3.2.16 A discussion of how and when the insured will receive the course completion certificate and how the 3 point credit is provided to the Division.

3.3 All Providers shall:

3.3.1 Require Instructors in classroom courses to present information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.

3.3.2 Require on-line courses, as well as other courses available other than in a classroom, to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based

questions during normal business hours which shall appear in bold large lettering on the website prior to the course sign up page. The set hours must be submitted to the Division for prior approval.

3.3.3 Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the renewal courses. Each classroom hour shall consist of not less than an average of 50 minutes of instructional time devoted to the presentation of course curriculum. Online courses shall be structured to provide the same learning time as required for classroom and shall submit to the Division any materials necessary to demonstrate their ability to comply with the minimum time requirement set forth in this section. A minimum of three hours must be devoted to the requirements in 3.1 through 3.2.16.

3.3.4 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.

3.3.5 Require its Instructor in classroom courses to be in the classroom with the students during any and all periods of instructional time.

3.3.6 Require Instructors in classroom courses to maintain an atmosphere appropriate for class-work.

3.3.7 Material required to be covered by this Regulation shall be discussed by the Instructor in a classroom situation and be included as on screen information in an on-line course. Changes in such material shall be submitted to the Division for pre-approval utilization in the classroom.

3.3.8 Supply students who complete a defensive driving course and who have presented a valid Delaware driver's license and/or government issued photo identification with a certificate of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course Provider as well as Instructor, with contact information and the Provider's authorized signature.

3.3.8.1 All online courses shall be required to obtain the student's driver's license number as part of the student identification information prior to permitting the student access to the course materials and have each student complete an online affidavit with a verification that they are the person who took the course and who is receiving the completion certificate and credit and that they understand that making a false unsworn falsification is a violation of 11 **Del.C.** §1233 of the Delaware Crimes Code, subjecting a violator to fine, imprisonment, or both.

3.3.9 Provide all students with a copy of a letter provided by the Division informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and/or shall provide a hard copy with the certificate of completion.

3.3.10 Notify the Division of each student's successful completion of the course in the manner and form required by the Division. Said notification shall be made within fourteen days of the student 's course completion.

3.3.11 Utilize and maintain either its own proprietary teaching or testing materials, or teaching and testing material properly obtained by a third party under a written license agreement. The Provider of an on-line course may not submit an original course application for a course previously approved by the Division and owned or licensed to another Provider. This section shall not limit the ability of a Provider of an approved on-line course to have independent licensing agreements with other entities.

3.3.12 Maintain requisite staffing, facilities, and resources necessary to process student payments, provide competent instruction, administer effective testing, issue timely completion certificates and provide proper notice to the Division of Motor Vehicles regarding credit earned from successful completion of the course.

3.3.13 Provide the Division with free site access to online courses for purposes of verification of compliance. Division Defensive Driving personnel shall have access to audit classroom courses at no cost, but with no credit.

4.0 Course Recertification

Course certifications shall expire three years after approval or of the effective date of this Regulation, whichever date occurs later. Providers shall submit applications for recertification no earlier than 6 months prior to expiration. Providers that submit recertification applications no later than ninety days prior to the expiration date shall be deemed approved until the Division has acted on the application. In all other cases course certification shall expire on the three year anniversary date and those courses shall be decertified until such time as approval is granted.

5.0 Certification Criteria for Defensive Driving Instructors

5.1 Basic Requirements. Each Instructor shall:

5.1.1 Be a licensed driver for a minimum of thirty-six months;

5.1.2 Be a high school graduate or have a G.E.D.;

5.1.3 Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and

5.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Division may require a criminal history background check of all applicants for an Instructor's certification.

5.1.5 Submit the Application for Certification with documentation showing that the applicant has:

5.1.5.1 a minimum of 9 hours of in-service training classes taught by a certified Instructor;

5.1.5.2 a maximum of 3 of those 9 hours may be satisfied by observing a certified Instructor teaching an actual class;

5.1.5.3 a minimum of 6 hours of trainee Instructor class presentations observed by a Provider-certified Instructor.

6.0 Instructor Re-certification

6.1 Every three years each certified Instructor shall:

6.1.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;

6.1.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

6.1.3 Submit a form as prescribed by the Division certifying that he or she continues to meet the requirements of an Instructor as outlined in this Regulation.

6.1.4 Submit a certified copy of his or her driving record.

6.2 The above-described submissions shall be filed not later than three months prior to the expiration date of the then-current certification. Instructors whose certification have expired shall not instruct any courses until they have been recertified.

6.3 The Division may provide procedural guidelines and directives through the use of bulletins and/or circular letters through the Division's website from time to time as may be appropriate.

7.0 Complaints, Hearings, De-certification, Suspension and Probationary Status

7.1 The following procedure shall be followed for the investigation of complaints regarding a DDC course and/or Instructors certified under section 3.0 and section 5.0, respectively, of this Regulation:

7.1.1 Any person who desires to files a complaint regarding a course and/or an Instructor of any course must do so in writing.

7.1.2 The complaint shall state the name of the course, its provider and/or Instructor and the facts that allegedly constitute the basis for the complaint. If either of these elements is missing from the complaint, the Division may, in its discretion, dismiss the complaint without further notice or a hearing.

7.1.3 The Division, upon determining that the complaint is complete as provided in section 7.1.2 above shall, within 15 days of the receipt of the complaint, transmit a copy of the complaint by certified mail, receipted email or other receipted delivery service to the Provider and/or Instructor named in the complaint at their address(es) of record in the Division files. The named Provider and/or Instructor may file an answer to the complaint within 20 calendar days with the Division.

7.1.4 The Division shall assign a staff member to investigate the complaint and the Provider's and/ or Instructor's response.

7.1.5 The staff member, as part of the investigation, shall provide a report of the staff member's findings and recommendations to the Director or the Director's designee for further action as may be appropriate under this section. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation either to take such action as may be authorized by this section or to dismiss the complaint.

7.1.6 A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Division. The Division shall provide a written notification of the Division action and the basic reason(s) therefore to the complainant and to the Provider and/or Instructor.

7.2 Nothing in this section of this Regulation shall preclude the Provider or Instructors from entering into a consent agreement with the Division.

7.3 A Provider and/or Instructor who receives a warning or is placed on probation and does not show proof of compliance with the conditions of the warning or probation within the time set forth in the consent agreement or order shall be subject to suspension or decertification.

7.4 In addition to the other provisions of this Regulation, a Provider and/or Instructor may be placed on probation, suspended or decertified for any one or more of the following:

7.4.1 Falsification of information on, or accompanying, the Application for Certification/Re- certification;

7.4.2 Falsification of, or failure to keep and provide, adequate student records and information as required herein; or

7.4.3 Falsification of, or failure to keep and provide, adequate financial records and documents as required.

7.4.4 Failure to comply with the course content requirements set forth in 3.0 above.

7.5 Upon a recommendation for further action under section 7.1 of this Regulation, the Director or the Directors' designee, shall determine whether the Provider and/or Instructor should be warned (with or without conditions), placed on probation (with or without conditions) for not more than 90 days, suspended for a period not to exceed 6 months, or to be permanently decertified for one or more violations of this Regulation. For purposes of the enforcement of this Regulation and the protection of the public, progressive discipline is not required.

7.6 Upon making a determination as provided for in section 7.5 of this Regulation, the Division shall provide written notice to the Provider and/or Instructor by certified mail, receipted email or other receipted delivery service. A copy of the notice shall be provided to the complainant. The notice shall include the following:

7.6.1 a summary of the complaint;

7.6.2 a summary of the information obtained in the investigation;

7.6.3 findings of fact and/or law; and

7.6.4 the sanction to be imposed by the Division.

7.7 Upon receipt of the notice provided for in section 7.6 of this Regulation, the Provider and/or Instructor shall have the right to a hearing and appeal.

7.7.1 Such written request must be filed with the Director within 14 days after receipt of a copy of the notice.

7.7.2 The hearing shall be before the Director or the Directors' designee.

7.7.3 Any such hearing shall be held within thirty (30) days after the date upon which the Director received the timely written request, unless there is a postponement or continuance. The Director, or the Directors' designee, may postpone or continue any hearing on their own motion, or upon written application of the Provider or Instructor for good cause shown.

7.7.4 During the pendency of any such hearing, the action taken shall be forthwith returned pending the outcome of such hearing, unless action taken was based upon a conviction of the Provider or any partner, officer, agent or employee of such Provider, and/or Instructor of a felony or of any crime or improper conduct, involving violence, dishonesty, indecency, degeneracy or moral turpitude or where the Provider has been found by the Division to be involved in improper conduct involving violence, dishonest, deceit, indecency, degeneracy, or moral turpitude, while acting as a Provider and/or Instructor.

7.8 A Provider or Instructor who is de-certified pursuant to this regulation must wait six (6) months from the date of de-certification before requesting re-certification.

8.0 Effective Date

This regulation shall become effective on March 11, 2015. Previously approved courses through the Department of Insurance will be honored until the expiration of their existing approval. All courses applying for approval on or after March 11, 2015, shall meet the requirements of this regulation prior to being approved.

18 DE Reg. 708 (03/01/15) (Final)