

# DEPARTMENT OF SAFETY AND HOMELAND SECURITY

## OFFICE OF THE SECRETARY

Statutory Authority: 20 Delaware Code, Sections 3116(b)(12) and 3121  
(20 Del.C., §§3116(b)(12), 3121)  
2 DE Admin. Code 1206

### PROPOSED

### PUBLIC NOTICE

#### 1101 Regulations Governing Travel Restrictions During A State Of Emergency

##### A. Type of Regulatory Action Required

Promulgation of Rules and Regulations pursuant to 20 Del. C. Sections 3116(b) (12) and 3121

##### B. Synopsis of Subject Matter of the Regulation

The Secretary of Safety and Homeland Security intends to promulgate rules and regulations as they relate to travel restrictions during a State of Emergency.

The proposed regulation develops a system and structure for the activation of travel restrictions during a State of Emergency and creates an avenue for the Secretary of Safety and Homeland Security to grant waivers to persons and/or entities which have a valid significant health, safety or business necessity.

Any person may submit their views, comments, concerns and recommendations by close of business on or before November 30, 2010 to Elizabeth Olsen, Deputy Secretary, at the Department of Safety and Homeland Security, 303 Transportation Circle, P.O. Box 818, Dover, Delaware 19903. A copy of the proposed regulations is available from the above address.

#### 1101 Regulations Governing Travel Restrictions During A State Of Emergency

It is the intent of the Department, pursuant to 20 Del.C. §3116(b)(12) and §3121, to establish rules and regulations which will ensure that any driving restriction imposed in Delaware during a declared state of emergency will be conducted in a manner and under conditions that will reduce the risk of physical harm to persons and property, and to first responders, while minimizing any limitation of movement throughout the State. It is the intent of these regulations to provide the most expeditious means to ensure the safety of the State's public roadways.

##### **1.0 Purpose.**

- 1.1 To provide specific direction to both the people and first responders in Delaware during a declared state of emergency by clearly defining the three tiers of driving restrictions:
- 1.2 To provide the people in Delaware with adequate notice prior to any driving ban or restriction being issued;
- 1.3 To ensure that the State provides the best mechanisms for people to get back on the roads in the most expeditious manner possible while ensuring the safety of people on the State's public roadways;
- 1.4 To issue a driving restriction in the most efficient and least restrictive manner possible in an effort to balance the needs of maintaining the public safety and the needs of people to freely and safely travel upon Delaware roadways;
- 1.5 To ensure that the first responders are not placed in a situation of undue risk; and
- 1.6 To encourage and educate organizations, entities and individuals to develop and maintain shelter-in-place contingency plans for use during the most severe conditions.

##### **2.0 Scope and Applicability**

- 2.1 Authority. These regulations are enacted pursuant to 20 **Del.C.** §§ 3116(b) (12) and 3121. These regulations shall be known as “Regulations Governing Travel Restrictions during a State of Emergency”.
- 2.2 Applicability. These regulations apply to persons operating a motor vehicle on public roadways during a declared state of emergency.
- 2.3 Exemptions: The following persons/entities are exempted from these regulations:
- 2.3.1 First responders: “First responders” shall mean federal, state and local governmental and non-governmental police, fire, and emergency personnel, including, but not limited to, other skilled personnel such as emergency management, public health and public works staff as defined in the State emergency response plans promulgated pursuant to 20 **Del.C.** Ch. 31 and by federal regulation, who are responsible for the protection and preservation of life, property, evidence, and the environment;
- 2.3.2 Operators of snow removal equipment employed or contracted by a public or private entity;
- 2.3.3 Public utilities as defined in 26 **Del.C.** § 102(2).
- 2.3.4 Individuals identified by providers of Voice Over IP service, as defined in 26 **Del.C.** § 202(i)(2) or Cellular telephone service, who are necessary to maintain the integrity of such providers’ networks or assist first responders and essential personnel as specified in these regulations.
- 2.3.5 Persons or entities identified as essential in State emergency response plans set forth pursuant to 20 **Del.C.** Ch. 31 of the Delaware Code. Those entities who have been pre-determined by the first responders as necessary for supporting their services and those government employees designated by federal, state, and/or local governmental agencies as essential to maintaining core governmental functions.
- 2.3.6 Constables as defined by Title 10, Chapter 27 of the Delaware Code.

### **3.0 Definitions.**

The following words, phrases, and terms as used in these regulations have the meanings given below:

**“Essential Personnel”** shall mean the following during the declaration of the driving restrictions listed below:

1. Level 3 Driving Ban: those employees and/or personnel listed under section 2.3 of these rules and regulations.
2. Level 2 Driving Restriction: those employees and/or personnel who:
  - a. are exempt under the definition of “Essential Personnel, Level 3 Driving Ban” and under section 2.3 of these regulations;
  - b. are necessary to maintain the core functions of a governmental body or entity;
  - c. are necessary to maintain the health and safety of the people of Delaware by providing healthcare services, food deliveries, and fuel deliveries, during a state of emergency, regardless of whether they are employed by a public or private entity;
  - d. have received a waiver as defined in section 3.0 and under section 8.0.

**“Exempt/Exemption”** shall mean any person or entity which has been specifically identified in sections 2.3, 5.1.1, 7.1 and 7.2.

**“Food Deliveries”** shall mean the delivery of any perishable food items to prevent spoilage and for the purpose of restocking inventory in anticipation of the expiration of the travel ban. For purposes of these regulations, “food deliveries” shall not include deliveries to a retailer, taproom or tavern, as those terms are defined in 4 **Del.C.** § 101.

**“Fuel Deliveries”** shall mean any delivery of fuel to include propane, oil, natural gas, or motor fuel for the purpose of maintaining heat and fueling vehicles permitted to operate during the state of emergency.

**“Healthcare service”** for the purposes of this regulation shall mean the following:

1. Hospitals
2. Healthcare facilities licensed primarily as emergent or critical care facilities

3. Skilled nursing facilities
4. Private ambulance services primarily used for emergency medical transport. This shall mean any privately owned vehicle, as certified by the Delaware State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded or otherwise incapacitated or helpless; or any ambulance service which provides routine transport for persons who are sick, convalescent, incapacitated and non-ambulatory but do not ordinarily require emergency medical treatment while in transit.
5. Pharmacies
6. Facilities primarily licensed to provide dialysis services.

It shall not include any routine outpatient services related to healthcare maintenance or managed care.

**“Incident”** shall mean an occurrence, natural or human-caused, that may require an emergency response to protect life or property.

**“Public Utilities”** shall mean any public utility as defined in 26 **Del.C.** § 102(2).

**“Response”** shall mean activities that address the short term, direct effects of an incident, to include immediate actions to save lives, protect property, and meet basic human needs, as well as the execution of emergency operations plans.

**“Shelter in Place”** shall mean sheltering those individuals essential to maintain core functions of an organization for the duration of a Level 3 Driving Ban:

1. within the confines of the requisite facility necessary to maintain business continuity; or,
2. within a contracted shelter located within a 2 mile radius of the requisite facility necessary to maintain business continuity upon the following conditions being met:
  - a. the entity has obtained a health, safety or business necessity waiver as defined by sections 3.0 and 8.0; and,
  - b. the entity is authorized to provide transportation and assumes responsibility for providing safe and appropriate transportation of essential employees to and from the shelter and requisite facility.

**“Significant health, safety or business necessity”** shall mean the following:

1. Health: A “significant health necessity” means all other healthcare related services that are not expressly exempted in these regulations or by the state emergency response plans pursuant to 20 Del.C. Ch. 31. It shall also mean activities by the commercial poultry or dairy industry that are necessary to maintain their operations, including but not limited to the delivery of feed, in order to minimize or eliminate the risk of death or injury to poultry or livestock, which could result in conditions hazardous to human health.
2. Safety: A “significant safety necessity” means activities by persons or entities which seek to minimize or to eliminate hazardous conditions where there is a real and significant impact on risk of death or injury.
3. Business Necessity: A “significant business necessity” means that a business may suffer irreparable financial or economic harm during the pendency of a driving ban or restriction. As a practical matter, because clientele/customers are restricted from driving during the pendency of a driving ban or restriction, a loss of retail sales is not sufficient, in and of itself, to constitute an irreparable financial or economic loss or harm.

**“Waiver”** shall mean a written release to all persons and entities meeting the criteria under section 8.10, not otherwise expressly exempted under section 2.3, 5.1.1, 7.1 and 7.2 or the state emergency response plans pursuant to 20 **Del.C.** Ch. 31.

#### **4.0 General Provisions.**

- 4.1 The Governor may issue separate levels of driving restrictions throughout the State based on the severity of conditions in any given area of the State.
- 4.2 As a result of conditions which could impact the State's roadways, DEMA, to the extent possible, shall inform the public and businesses to begin initiating contingency plans. Such plans could encompass shelter-in-place provisions in response to the potential severity in road conditions in the event a State of Emergency is issued.

## **5.0 Level 3 Driving Ban or Level 2 Driving Restriction.**

- 5.1 Unless otherwise modified by executive order issued by the Governor, in the event of a Level 3 Driving Ban or a Level 2 Driving Restriction, the following shall apply:
  - 5.1.1 Level 3 Driving Ban. No person shall operate a motor vehicle on Delaware roadways when a Level 3 Driving Ban has been activated, except for the following:
    - 5.1.1.1 Persons designated as first responders and essential personnel as specified in the Delaware Emergency Operations Plans pursuant to Title 20, Chapter 31 of the Delaware Code;
    - 5.1.1.2 Persons designated as first responders and essential personnel by executive order of the Governor;
    - 5.1.1.3 Operators of snow removal equipment employed or contracted by a public or private entity;
    - 5.1.1.4 Persons designated as essential personnel for a public utility as defined in 26 Del.C. §102(2).
    - 5.1.1.5 Individuals identified by providers of Voice Over IP service, as defined in 26 Del.C. §202(i)(2) or Cellular telephone service who are necessary to maintain the integrity of such providers' networks or assist first responders and essential personnel as specified in these regulations.
    - 5.1.1.6 Constables as defined in Title 10, Chapter 27 of the Delaware Code.
  - 5.1.2 All businesses, professional offices, organizations, entities, individuals, etc., not otherwise exempted under subsection 5.1.1 shall take appropriate protective actions to protect themselves, their customers, their employees and the people in Delaware by:
    - 5.1.2.1 Temporarily terminating all travel for the duration of a Level 3 Driving Ban and providing shelter-in-place to their employees as defined in section 3.0; or,
    - 5.1.2.2 Temporarily shutting down operations for the duration of the Level 3 Driving Ban.
  - 5.1.3 To the extent possible, a Level 3 Driving Ban shall only be issued in an area where the conditions are most severe for a limited duration, with the limited purpose of clearing the restricted area to allow for safe travel through that area.
  - 5.1.4 Level 2 Driving Restriction. No person shall operate a motor vehicle on Delaware roadways when a Level 2 Driving Restriction has been activated, except for the following:
    - 5.1.4.1 Any entity or person exempted from the Level 3 Driving Ban in section 2.3, 5.1.1, 7.1 and 7.2;
    - 5.1.4.2 Organizations, entities and/or persons that have obtained a waiver pursuant to section 8.0 of these regulations.

## **6.0 Level 1 Driving Warning.**

- 6.1 All persons operating a motor vehicle when a Level 1 Driving Warning has been activated shall exercise extra caution in the operation of their motor vehicle.
- 6.2 Non-essential personnel, regardless of whether employed by a public or private entity, are encouraged not to operate a motor vehicle on public roadways when a Level 1 Driving Warning has been activated, unless there is a significant health, safety or business necessity reason for doing so.

## **7.0 Exemptions.**

- 7.1 Pursuant to Section 3.0, essential employees with valid employee identification from the following healthcare services shall be exempt from these regulations:
  - 7.1.1 Bayhealth Medical Center;

- 7.1.2 Beebe Medical Center;
  - 7.1.3 Nanticoke Memorial Hospital, Inc.;
  - 7.1.4 VA Medical & Regional Office Center;
  - 7.1.5 St. Francis Hospital;
  - 7.1.6 Alfred I. DuPont Hospital for Children;
  - 7.1.7 Christiana Care;
  - 7.1.8 Rockford Center;
  - 7.1.9 Dover Behavioral Health System;
  - 7.1.10 Delaware Hospice.
- 7.2 Any person, organization or entity that provides healthcare services, or provides food delivery services or fuel delivery services as defined in Section 3.0 shall apply to have the name or the person, organization or entity placed on a list exempting that person, organization or entity from these regulations. Application shall be made to the Delaware Emergency Management Agency.
- 7.3 All persons, organizations and entities listed as exempt from these regulations pursuant to this subsection shall provide their essential personnel with appropriate employment identification.
- 7.4 All other persons or entities not otherwise included in this section shall first apply for a waiver pursuant to 20 Del.C. § 3116(b)(12) and section 8.0 of these regulations.

## **8.0 Waivers and Administrative Procedures:**

- 8.1 No person or entity shall operate a motor vehicle during a Level 2 Driving Restriction unless expressly exempted from these regulations, without first obtaining a waiver from the Secretary of the Department of Safety and Homeland Security.
- 8.2 Any organization, entity or person subject to these regulations that violates 20 Del.C. § 3116(12) and/or these regulations shall be sanctioned pursuant to 20 Del.C. § 3125 and/or cited for a violation of 21 Del.C. § 4176(C).
- 8.3 All persons and entities receiving a waiver from these regulations shall abide by the conditions of their waiver issued by the Department.
- 8.4 Application: All applications for waivers shall be submitted to the Department of Safety and Homeland Security beginning on October 1<sup>st</sup> of each year. Applications may be completed and downloaded on the State of Delaware Emergency Management Agency website.
- 8.5 Approval/Denial: The Department shall act upon an application for a waiver within 15 days after receipt of the application for waiver. When a final determination has been made on an application, the Department shall issue a notification of approval or denial via email. If the Department issues a letter of denial, the letter shall explain the reasons for such denial. The Department shall maintain a record of the notification of approval or denial for a period of 2 years.
- 8.6 Duration of Waiver: A waiver shall be valid for one (1) year from the date of issuance.
- 8.7 Renewal of Waiver: Any organization, entity or person wishing to renew an existing waiver that is ready to expire shall, not less than 60 days prior to the expiration date of the existing waiver, submit to the Department, a waiver renewal application from with all supporting documentation and appropriate fees as required by these regulations.
- 8.8 Modification or Termination of a Waiver:
- 8.8.1 Any request for a modification of the waiver must be made in writing to the Department.
  - 8.8.2 The Department may terminate a waiver if it finds that it does not meet the standard as set forth in section 8.10.
- 8.9 Waivers are non-transferable.
- 8.10 Standard. Any person who has authority to legally bind an organization or entity, or a person representing him or herself as an individual or sole proprietorship, may apply for a waiver to be exempt from these regulations when a significant health, safety or business necessity as defined in section 3.0 of these regulations is shown for issuing such a waiver.

8.11 All persons or entities that receive a waiver from these regulations shall provide in their application for a waiver to the Delaware Emergency Management Agency the number of essential personnel pursuant to these regulations. Persons and entities applying for a waiver shall also provide in their application the essential functions necessary to maintain core operations and the allocation of their essential personnel to those operations.

8.12 Persons or entities that receive a waiver under these regulations shall provide appropriate employee identification indicating that the employee is essential under a significant health, safety or business necessity.

**9.0 Limitations of the Regulations.**

9.1 Nothing in these regulations shall limit the power or authority of the Governor pursuant to 20 Del.C. Ch. 31.

9.2 Nothing in these regulations shall create in any person or entity additional rights against the State for a claim of damages, from civil, criminal or administrative actions resulting from the enforcement of these rules and regulations.