

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

FINAL

ORDER

1101 Regulations Governing Travel Restrictions During A State Of Emergency

I. NATURE OF THE PROCEEDINGS

Pursuant to its authority under 20 **Del.C.** §3116(b)(12)b., the State of Delaware Department of Safety and Homeland Security proposed new regulations as they relate to travel restrictions during a State of Emergency. The Department's purpose in creating new regulations was to develop a predictable and consistent system and structure for the activation of travel restrictions during a State of Emergency. Additionally, the creation of new regulations provides an avenue for the Secretary of Safety and Homeland Security to grant waivers to persons and/or entities which meet the criteria for obtaining such a waiver.

Notice of the public comment period of thirty (30) days related to the Department's proposed regulations was published in the *Delaware Register of Regulations* on October 29, 2010.

II. PUBLIC COMMENTS

The Department received the following public comments in response to its notice of intention to adopt the proposed regulations and offers the following responses thereto:

- A public comment was received concerning the ability of healthcare agencies, facilities and providers to provide services to vulnerable Delawareans not only residing in life-saving facilities, but also residing in life-sustaining facilities. The commentors expressed a trend in Delaware to provide services to vulnerable Delawareans who reside in a residential setting, rather than at an agency or facility. After discussion with the commentors, all parties recognized the need to shelter in place to the extent possible to ensure the safety of their employees and the first responders. The Department of Safety and Homeland Security also recognizes the need for vulnerable Delawareans who are in need of life-saving and life sustaining services to receive those services, and have amended the regulations to ensure that those services are provided.
- A public comment was received requesting that the Office of the Chief Medical Examiner staff be exempt as essential personnel, since by law, OCME staff must investigate deaths that occur during a State of Emergency. The OCME is identified in the Delaware Emergency Operations Plan. Additionally, personnel within the OCME are critical to the DHSS Mass-Casualty Incident Plan. To the extent that deaths occur during a State of Emergency which must be investigated by the OCME, any request for the OCME shall be considered a resource request to DEMA through DHSS. Upon approval by DEMA, the OCME shall be permitted to travel or shall be provided transportation. The Department declines to amend the regulations.
- A public comment was received expressing concern that service providers will have to shelter in place as soon as a Level 3 Ban has been imposed and they will not be given the time to travel home or to a safe location. To the extent possible, the public will be given advance notice of the imposition of a Level 3 Travel Ban to allow them to prepare for the event or to leave their workplace to return to their home or other safe location.
- A public comment was received requesting that "additional essential personnel" of a chemical company be permitted to travel during a Level 3 Travel Ban to mitigate on-site emergencies during a State of

Emergency. The purpose of allowing the additional personnel to travel would be to supplement or relieve staff already on site. Pursuant to 20 **Del.C.** §3116(b)(12), the Department of Safety and Homeland Security only has authority to grant exemptions or waivers during a Level 2 Travel Restriction. A Level 3 Travel Ban would indicate that conditions are so severe that it requires persons and entities who are not exempted in a Level 3 Travel Ban to shelter-in-place. Sheltering-in place not only includes sheltering in the person's actual workplace, but also at a location within a 2 mile radius of the person's workplace as long as the employer assumes responsibility for the transportation of that employee. Additionally, although it is possible that a Level 3 Travel Ban may be activated statewide, it is the State's intention that the activation of a Level 3 Travel Ban will, in most cases, be limited in duration, scope and geography.

- A public comment was received requesting that specific criteria be included in the regulations which would clearly define the circumstances in which each of the three levels of travel restrictions would be implemented. 20 **Del.C.** §3116(b)(12) and the regulations pertaining to the activation of travel restrictions during a state of emergency is meant to be applied to all natural or man-made hazards to the extent possible. As a result, the activation of a travel restriction or warning is based on the specific circumstances of the state of emergency. It is therefore not possible to establish specific criteria which would trigger one level of travel restriction over another. The Department, in coordination with the Governor and DEMA, will provide as much advance notice as possible of the implementation of a specific travel restriction or warning.
- A public comment was received requesting amendment of the definition of "essential personnel" under section 3.0 of the regulations. The Department declines to amend the definition after careful review of the language. The definition specifically defines who will be considered essential personnel based upon the language in 20 **Del.C.** §3116(b)(12).
- A public comment was received requesting that entities providing support services to organizations deemed exempt under these regulations also be exempt during the activation of a Level 2 Travel Restriction. The Department declines to amend the regulations to provide an exemption for such entities. If an entity who provides support service to an exempt organization does not meet the criteria to be considered exempt from a Level 2 Travel Restriction, it may apply for a waiver based upon a significant health, safety or business necessity as defined in section 3.0 of the regulations.
- A public comment was received requesting clarification on the validity of a waiver during a Level 3 Travel Ban. A waiver is not valid during a Level 3 Travel Ban. Additionally, it is not required during a Level 1 Travel Warning.
- A public comment was received requesting that funeral homes be considered exempt from a Level 2 Travel Restriction. Members of the Delaware State Funeral Directors Association are specifically mentioned in Delaware Public Health Preparedness Section Plans including the Mass Casualty Incident Plan. If the plans requesting Funeral Directors Association member services were activated during a declared state of emergency that resulted in a travel ban, the requested Funeral directors and employees would be permitted to drive pursuant to an approved resource request from DEMA or the Department of Health and Social Services. The Department declines to amend the regulations to include funeral homes as exempt under a Level 2 Travel Restriction.
- A public comment was received as to whether an organization's volunteers and paid staff reporting to DEMA or County 911 Centers and opened shelters were exempt from the travel restrictions. To the extent that an organization has been activated by DEMA through the Delaware Emergency Operations Plan, they will be exempt from the regulations by virtue of the request made by DEMA. The organization's essential personnel must have valid employee identification as they travel during the activation of a Level 3 or Level 2 travel restriction.
- A public comment was received requesting who would be responsible for obtaining the waiver, the employee or the company. Additionally, the commentor asked whether the employee would be required to have the waiver on their person when traveling during a Level 2 Travel Restriction. In that situation, the company would apply for the waiver requesting that their essential employees be waived from the travel restrictions. Once a waiver has been obtained, the employee will be required to carry a certification indicating that they are essential personnel of that company. The employee must also have valid employee identification on their person. The waiver application and certification process is being developed. It is expected to be available to the public by March 31 st, 2011 on the DEMA website.

- A public comment was received requesting whether food deliveries could be made to retail grocery stores during Level 1, 2, or 3 travel restrictions. A Level I Travel Warning is not a travel restriction, but a warning urging people to use extra caution when traveling on the roadways. During a Level 2 Travel Restriction, an exempt organization, entity or individual does not have to apply for a waiver. However, the name of their entity must be retained on a list at DEMA. Section 3.0 specifically exempts pharmacies under the health care services definition. Under the definition of "Food Deliveries", any entity or person traveling for the purpose of delivering "perishable food items to prevent spoilage and for the purpose of restocking inventory in anticipation of the expiration of the travel restriction" shall be exempt from a Level 2 Travel Restriction. The only persons or entities exempt from a Level 3 Travel Ban are those described in 20 **Del.C.** §3116(b)(12) and these regulations. All those not exempt under a Level 3 Travel Ban are encouraged to prepare in advance of the state of emergency to the extent possible and to shelter-in-place for the duration of the state of emergency, unless otherwise directed via the Governor's executive order.
- A public comment was received requesting whether an organization, entity or individual who is exempt under these regulations would still have to apply for a waiver. An organization, entity or individual that is exempt from a Level 2 Travel Restriction does not have to apply for a waiver. However, the name of their entity must be retained on a list at DEMA.
- A public comment was received requesting whether an organization or entity, such as a retailer or grocery store must close during a Level 1, 2, or 3 Travel Restriction. Neither these regulations nor 20 **Del.C.** §3116(b)(12) addresses the issue of whether an organization or entity must close during a Level 1, 2, or 3 travel restriction. Rather, the primary purpose of 20 **Del.C.** §3116(b)(12) and these regulations is to restrict the travel of motorists on the State's roadways during a state of emergency to ensure people's safety and the safety of first responders. An entity that has not received a waiver may remain open for business without jeopardizing the safety of its employees or customers if the employees or customers do not have to drive in a motor vehicle.
- A public comment was received regarding the ability of a company to take action against a non-essential employee who has been ordered to report to work. An employer may not take any adverse employment action against a nonessential employee who fails, or refuses, to report to work after being ordered to do so.
- A public comment was received requesting clarification of "State emergency response plans" section 2.3.1 of these regulations. "State emergency response plans," pursuant to 20 **Del.C.** Chap. 31, refer specifically to the Delaware Emergency Operations Plans developed and promulgated by the Delaware Emergency Management Agency. The Department amended section 2.3.1 to correctly reflection this clarification.
- A public comment was received suggesting that the Department adopt a uniform ID "exempt" template for use by State personnel who have been identified as first responders or essential. Each agency would be responsible for producing the ID cards for their essential personnel. The Department appreciates the suggestion and will take it under consideration.

III. FINDINGS AND CONCLUSION

Based on the comments received, the Secretary of the Department of Safety and Homeland Security finds that the amendments made in response thereto do not change the intent or meaning of these regulations. Therefore, based on the foregoing, the proposed regulations, as amended, shall be adopted.

IV. ORDER

AND NOW, this 10th day of February, 2011, it is hereby ordered that:

The proposed regulations, as amended, are adopted;

The text of the proposed regulations shall be in the form attached as Exhibit A;

The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 **Del.C.** §10115(e); and,

The Department reserves unto itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

IT IS SO ORDERED.

Lewis B. Schilliro, Secretary

Department of Safety and Homeland Security

DATED: January 10, 2011

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 Delaware Emergency Operations Plan]~~ promulgated [by the Delaware Emergency Management Agency] 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 [and/or debris] 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 the Delaware Emergency Operations Plan promulgated by DEMA]~~ 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:

["Department" shall mean the "Delaware Department of Safety and Homeland Security or its designee as authorized by the Secretary."]

"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[~~, 7.3, and 7.4].

"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[s]" for the purposes of this regulation shall **[not include any routine outpatient services related to healthcare maintenance or managed care. Healthcare services shall]** mean the following:

- ~~1. **Hospitals**~~
- ~~2. **Healthcare facilities licensed primarily as emergent or critical care facilities**~~
- ~~3. **Skilled nursing facilities**~~
1. **Healthcare facilities licensed primarily to provide life-saving (emergency or critical care) or life sustaining services, specifically:**
 - a. **Hospitals;**
 - b. **Licensed skilled nursing home facilities; and,**
 - c. **Facilities primarily licensed to provide dialysis services.**
2. **Any clinical provider licensed by the State and employed by a licensed and certified hospice or skilled home health care agency.**
- ~~43]. 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.

~~[54].~~ 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.

“Secretary” shall mean the Secretary of the Delaware Department of Safety and Homeland Security.]

“Shelter in Place” shall mean ~~[sheltering providing facilities for]~~ 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 location]~~ 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 contracted location]~~ 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 Delaware Emergency Operations Plans promulgated by DEMA]~~ 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, 7.2, 7.3 and 7.4]~~ or the ~~[state emergency response plans Delaware Emergency Operations Plans promulgated by DEMA]~~ 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 [promulgated] 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 [and/or debris] 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~~, 7.2, 7.3 and 7.4];

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 [under a Level 2 Travel Restriction].

7.1 Pursuant to Section 3.0, essential [employees personnel] 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 clinical provider licensed by the State to provide hospice care, employed by the following, and with valid employee identification, shall also be exempt from these regulations:

- 7.2.1 **Angel Care Hospice, LLC;**
- 7.2.2 **Compassionate Care Hospice;**
- 7.2.3 **Delaware Hospice, Inc.;**
- 7.2.3 **Heartland Hospice House of Delaware;**
- 7.2.4 **Heartland Hospice Services, Inc.**
- 7.2.5 **Odyssey Hospice;**
- 7.2.6 **Seasons Hospice and Palliative Care of DE, LLC;**
- 7.2.7 **Taylor Hospice;**
- 7.2.8 **Vitas Healthcare Corporation Atlantic.**

7.3 Any clinical provider licensed by the State to provide skilled home health care.]

7.[24] 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.[35] 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.[46] 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 [under a Level 2 Travel Restriction]:

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 1st of each year~~ March 31st, 2011]. Applications may be completed and downloaded on the State of Delaware Emergency Management Agency website [at <http://dema.delaware.gov>].

8.5 Approval/Denial: ~~[The Department shall act upon an application for a waiver within 15 days~~ No waiver application shall be granted within 21 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~~ two (2) years] 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 form]~~ 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]. An organization, entity or individual may also apply for a waiver upon the recommendation from either the Kent, Sussex, New Castle County, or City of Wilmington emergency management agency.]~~

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. **[All persons or entities who have received a waiver shall maintain records of the waiver certificate(s) for purposes of validation.]**

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.

[8.13 No person or individual shall falsify information in their application for a waiver, or submit false documents in support of their application for a waiver. Any individual in violation of this section may be criminally sanctioned pursuant to 11 Del.C. §877.]

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.

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