

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1806 (24 **Del.C.** 1806)
24 **DE Admin. Code** 1800

PROPOSED

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

PUBLIC NOTICE

The Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration in accordance with 24 **Del.C.** §1806 has proposed amendments to rule 1.0 General Provisions of its rules and regulations. The proposed amendments define the term "full-time employee" as it relates to supervision, and allows for the definitions to be applicable to the statute as well as the regulations. The Board had received a number of requests from applicants and licensees for a definition of the term "full-time employee", which appears in 24 **Del.C.** §1802 (18). The Board determined that the requirement that the supervision be provided by a master licensee who was a full-time employee needed clarification to assist licensees and applicants in the determination and selection of acceptable supervision. The Board modeled its proposed definition on the definition of full-time employee in the Delaware State Fire Prevention Regulations.

A public hearing will be held on January 12, 2010 at 8:45 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

1.0 General Provisions.

- 1.1 Election of Officers. The Board will elect a President, Vice-President, and Secretary annually in May. In the event of a resignation, termination or departure of one of the officers, a replacement shall be elected at the next Board meeting or at a meeting called for that purpose.
- 1.2 Definitions - Words and terms defined in Title 24, Section 1802 of the **Delaware Code** are applicable to these regulations. The following additional words and terms, ~~when used within these regulations,~~ shall have the following meaning, unless the context clearly indicates otherwise:
 - "Certificate of Good Standing"** means a certified statement of the applicant's disciplinary and complaint record as a license holder in another jurisdiction, which is sent directly from the other jurisdiction to the Board.
 - "Complete application"** means the Division of Professional Regulation has received the application form, all supporting documents (including verifications of disciplinary record), and all required fees.
 - "Full-Time Employee"** for purposes of supervision means any employee working a minimum of thirty hours per week, averaged over a period of one year, who regularly receives compensation from the entity providing services and receives a W-2 form annually from the entity providing services.

11 DE Reg. 86 (07/01/07)

2.0 Plumbing Licensing Requirements.

- 2.1 Pre-examination Requirements
 - 2.1.1 Board approval is required before an applicant will be allowed to sit for the exam. To get Board approval, an applicant must complete and return an application form to the Board's office, showing that the applicant has two (2) years of verified experience under the supervision of a licensed

plumber after having received a Journeyman's Certificate in an apprenticeship program that meets or exceeds the Federal Bureau of Apprenticeship and Training Standard. Alternatively, the applicant can show seven (7) years of verified experience under the supervision of a licensed plumber if the applicant has successfully completed the series of state-approved tests offered in the Delaware technical high schools or other apprenticeship school.

- 2.1.2 Supporting documentation. The applicant shall present a copy of the Journeyman certificate or the applicant shall present proof of passing the series of state-approved tests offered in the Delaware technical high schools or other apprenticeship school. Verification of the required experience shall be by affidavit of the supervising licensed plumber on the form approved by the Board. If the applicant is unable to obtain an affidavit from the supervising licensed plumber, the tax form W-2 or the affidavit of the employer or officer of the employing company may be submitted as proof of experience at the discretion of the Board.
 - 2.1.3 Disciplinary record. An applicant must also certify to the Board that he or she has not engaged in any of the acts that would be grounds for discipline of a licensee of the State of Delaware and that he or she does not have any disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where he or she has previously been or currently is licensed, or certified as a plumber. An applicant currently or previously licensed or certified in another jurisdiction shall provide the Board with certified statements from all other such jurisdictions verifying their disciplinary and complaint records.
 - 2.1.4 Complete application. An application to sit for the examination is not considered complete until the Division of Professional Regulation has received the application form, all supporting documents (including verifications of disciplinary record) and all fees required by this section.
- 2.2 Licensure by Examination.
- 2.2.1 The exam will be offered four (4) times per year, once quarterly. No person shall be permitted to sit for the exam until he or she has completed the pre-examination requirements of Subsection 2.1 and received the Board's approval to take the exam.
 - 2.2.2 Reexamination. Applicants who do not earn a passing score on the exam may retake it two (2) additional times, at the next regularly scheduled administrations, without further Board approval. An applicant who does not pass the exam after three (3) attempts must reapply to the Board for permission to retake the exam. Such applicants may not reapply until one (1) year has passed from the date he or she last took the exam.
- 2.3 Licensure by Reciprocity.
- 2.3.1 An applicant under this section must demonstrate that the standards for licensure of the state through which the applicant seeks reciprocity are equivalent to those of this State. Applicants must provide that state's laws and regulations governing licensure to the Board.

11 DE Reg. 86 (07/01/07)

3.0 HVACR Licensure Requirements

- 3.1 Licensure by Examination - All applicants must submit complete applications. Only complete applications will be considered by the Board. Successful applicants must:
 - 3.1.1 Pass the Board-approved HVACR exam - Applicants must have prior approval from the Board to take the exam. To get the Board's approval, an applicant must first meet all the requirements in regulations 3.1.2 through 3.1.5. The exam is offered four (4) times per year, once quarterly. A score of 70% or greater is required to pass the exam.
 - 3.1.2 Document the required experience - The law contains different experience requirements for applicants with a Journeyman's Certificate and those without a Journeyman's Certificate, as described below:
 - 3.1.2.1 Journeyman's Certificate - Applicants that have a Journeyman's Certificate from an apprenticeship program that meets or exceeds the Federal Bureau of Apprenticeship and Training Standard must include a copy of the Certificate with their application. These applicants must also document completion of two (2) years of post-apprenticeship HVACR

experience under the direct supervision of a master HVACR licensee, master HVACR restricted licensee, or an individual holding a similar level of licensure in another state. Experience gained before receipt of the Journeyman's Certificate does not qualify and will not be counted toward fulfillment of the two (2) year requirement.

- 3.1.2.2 No Journeyman's Certificate - Applicants who do not possess a Journeyman's Certificate must document completion of seven (7) years of HVACR experience under the direct supervision of a master HVACR licensee, master HVACR restricted licensee, or an individual holding a similar level of licensure in another state.

Applicants without a Journeyman's Certificate must also pass the series of Board-approved apprenticeship equivalency exams (known as the "Bypass Exams") before they will be approved to take the HVACR exam. Applicants must have prior approval from the Board to take the exam. Applicants will receive approval after they meet all the requirements in regulations 3.1.2 through 3.1.5. Applicants who pass the Bypass Exams are automatically approved to take the HVACR exam.

- 3.1.2.3 Proper Documentation of Experience - Documentation of the required experience shall be by affidavit of the applicant's supervisor. Applicants unable to obtain an affidavit from their supervisor may submit tax W-2 tax forms or affidavits of the employers or officer of their employing companies as alternative proof of experience. Alternative proof of experience is acceptable at the discretion of the Board. All affidavits must be on the affidavit form approved by the Board and available through the Board's office.

- 3.1.3 Provide a copy of their CFC Card - Document certification at the appropriate level for handling chlorofluorocarbons (COUGH's) by a testing organization approved by the Environmental Protection Agency.

- 3.1.4 Truthfully attest in the affirmative that they:

3.1.4.1 have not received any administrative penalties regarding their provision of HVACR or HVACR restricted services;

3.1.4.2 do not have any disciplinary proceedings or unresolved complaints pending against them in any jurisdiction where they have previously been or are currently authorized to provide HVACR or HVACR restricted services;

3.1.4.3 do not have an impairment related to drug or alcohol use that would limit their ability to provide HVACR or HVACR restricted services in a manner that is not detrimental to the health, safety, or welfare of the public; and

3.1.4.4 do not have a criminal conviction, or any pending criminal charges, for any crime listed in or covered by Board regulation 8.0.

- 3.1.5 Provide Certificates of Good Standing - Applicants who have ever been licensed or certified by another jurisdiction (another state, the District of Columbia, or a U.S. territory) must contact the other jurisdiction and request a certified statement of the applicant's disciplinary and complaint record. All certified statements must be sent from other jurisdictions directly to the Board.

- 3.1.6 Reexamination - Applicants who do not pass the exam may retake it at the next two (2) regularly scheduled administrations without further Board approval. An applicant who does not pass the exam after these three (3) attempts may reapply for licensure but not until one (1) year after the date of the third exam.

- 3.2 Licensure by Reciprocity - An applicant for licensure by reciprocity must demonstrate that the standards for licensure of the state through which the applicant seeks reciprocity are equivalent to those of this State. Applicants must provide that state's HVACR licensure or certification laws and regulations to the Board.

11 DE Reg. 86 (07/01/07)

4.0 Reserved

11 DE Reg. 86 (07/01/07)

5.0 Reserved
11 DE Reg. 86 (07/01/07)

6.0 Reserved
11 DE Reg. 86 (07/01/07)

7.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 7.1 A written report, signed by a complainant, alleging that a licensee may be chemically dependent or impaired is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 7.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 7.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 7.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 7.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in section 7.8.
- 7.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
 - 7.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
 - 7.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

- 7.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 7.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 7.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 7.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 7.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 7.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 7.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 7.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 7.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 7.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

6 DE Reg. 861 (1/1/03)

8.0 Crimes substantially related to plumbing services.

- 8.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to plumbing services or in the State of Delaware without regard to the place of conviction:
 - 8.1.1 Reckless endangering in the first degree. 11 **Del.C.** §604
 - 8.1.2 Assault in the second degree. 11 **Del.C.** §612
 - 8.1.3 Assault in the first degree. 11 **Del.C.** §613
 - 8.1.4 Manslaughter. 11 **Del.C.** §632
 - 8.1.5 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
 - 8.1.6 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634

- 8.1.7 Murder in the second degree. 11 **Del.C.** §635
 - 8.1.8 Murder in the first degree. 11 **Del.C.** §636
 - 8.1.9 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
 - 8.1.10 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
 - 8.1.11 Rape in the fourth degree. 11 **Del.C.** §770
 - 8.1.12 Rape in the third degree. 11 **Del.C.** §771
 - 8.1.13 Rape in the second degree. 11 **Del.C.** §772
 - 8.1.14 Rape in the first degree. 11 **Del.C.** §773
 - 8.1.15 Sexual extortion. 11 **Del.C.** §776
 - 8.1.16 Continuous sexual abuse of a child. 11 **Del.C.** §778
 - 8.1.17 Kidnapping in the second degree. 11 **Del.C.** §783
 - 8.1.18 Kidnapping in the first degree. 11 **Del.C.** §783A
 - 8.1.19 Arson in the second degree. 11 **Del.C.** §802
 - 8.1.20 Arson in the first degree. 11 **Del.C.** §803
 - 8.1.21 Criminal mischief. 11 **Del.C.** §811
 - 8.1.22 Burglary in the third degree. 11 **Del.C.** §824
 - 8.1.23 Burglary in the second degree. 11 **Del.C.** §825
 - 8.1.24 Burglary in the first degree. 11 **Del.C.** §826
 - 8.1.25 Robbery in the second degree. 11 **Del.C.** §831
 - 8.1.26 Robbery in the first degree. 11 **Del.C.** §832
 - 8.1.27 Theft; lost or mislaid property; mistaken delivery. 11 **Del.C.** §842
 - 8.1.28 Theft; false pretense. 11 **Del.C.** §843
 - 8.1.29 Theft, false promise. 11 **Del.C.** §844
 - 8.1.30 Theft of services. 11 **Del.C.** §845
 - 8.1.31 Extortion. 11 **Del.C.** §846
 - 8.1.32 Identity theft. 11 **Del.C.** §854
 - 8.1.33 Forgery. 11 **Del.C.** §861
 - 8.1.34 Falsifying business records. 11 **Del.C.** §871
 - 8.1.35 Unlawful use of credit card. 11 **Del.C.** §903
 - 8.1.36 Renderer and scanning devices. 11 **Del.C.** §903A
 - 8.1.37 Insurance fraud. 11 **Del.C.** §913
 - 8.1.38 Home improvement fraud. 11 **Del.C.** §916
 - 8.1.39 New home construction fraud. 11 **Del.C.** §917
 - 8.1.40 Dealing in children. 11 **Del.C.** §1100
 - 8.1.41 Sexual exploitation of a child. 11 **Del.C.** §1108
 - 8.1.42 Sexual solicitation of a child. 11 **Del.C.** §1112A
 - 8.1.43 Perjury in the second degree. 11 **Del.C.** §1222
 - 8.1.44 Perjury in the first degree. 11 **Del.C.** §1223
 - 8.1.45 Aggravated harassment. 11 **Del.C.** §1312
 - 8.1.46 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447
 - 8.1.47 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A
 - 8.1.48 Breaking and entering, etc., to place or remove equipment. 11 **Del.C.** §2410
- 8.2 Crimes substantially related to plumbing services shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

8 DE Reg. 1000 (01/01/05)

13 DE Reg. 825 (12/01/09) (Prop.)