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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2906(b) (16 **Del.C.** §2906(b))
16 **DE Admin. Code** 4452

PROPOSED

PUBLIC NOTICE

4452 Clean Indoor Air Act

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the Delaware Clean Indoor Air Act. The purpose of the amendments is to add electronic smoking devices to the regulations. On September 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Wednesday, September 30, 2015 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the September 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: http://regulations.delaware.gov or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, October 9, 2015, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

4452 Clean Indoor Air Act

1.0 Preamble

These Regulations are adopted in accordance with authority vested in the Secretary, Department of Health and Social Services, by 16 **Del.C.** §2906(b). These Regulations establish standards for the enforcement of the Clean Indoor Air Act as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. Regulations establishing standards for the enforcement of the Clean Indoor Air Act affecting employers, employees and the workplace are adopted by the Department of Labor.

2.0 Purpose

These regulations shall be construed and applied to protect the nonsmoker from involuntary exposure to environmental tobacco smoke and emissions produced by electronic smoking devices in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke and emissions produced by electronic smoking devices.

3.0 Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

4.0 Date of Effect

These regulations shall be effective ~~November 27, 2002~~ December 1, 2015.

5.0 Inspections

The Secretary, DHSS, or authorized designee shall have right of entry into any enclosed indoor area subject to 16 **Del.C.** Ch. 29.

6.0 Waiver

The Department of Health and Social Services may upon written request waive the provisions of these Regulations if the Department determines there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of non-consumers of tobacco products.

7.0 Definitions

7.1 The following words, terms, and phrases, when used in these regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

7.2 For the purposes of these Regulations:

"Department" means the Delaware Health and Social Services (DHSS) as defined in Title 29 **Del.C.** §7901.

"**Electronic Smoking Device**" means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

"Environmental Tobacco Smoke" (ETS), or **"Secondhand Smoke"** means the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking" or "involuntary smoking."

"Enclosed Indoor Area" means an indoor area that is neither open nor partially enclosed except for normal means of access and egress through doors or passageways.

"Fraternal Benefit Society" means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 **Del.C.** §6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter~~, is hereby declared to be a fraternal benefit society~~.

"Private Club" means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:

a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;

b. Limits access and use of facilities, services and activities of the organization to members and guests of the members;

c. Is controlled by its membership and operates solely for the benefit and pleasure of its members;

d. ~~Advertises exclusively and only to its members, excluding membership drives.~~

~~e.~~ ~~Advises~~ Advertises exclusively and only to its members, excluding membership drives.

"Private Social Function" means a function to which the public is neither invited or generally permitted access and which is held in separate indoor enclosed indoor area**.**

"Public Transportation of Children" means transportation which involves the transportation of children by a vehicle under the control of a daycare, school or other organizations.

"Secretary" means the Administrator of the Delaware Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

"Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or, the use of an electronic smoking device which creates an aerosol or vapor, or in any manner or in any form.

"**Vapor Establishment**" means a business that: 1) generates at least 80% of its revenue from the sale of electronic smoking devices and substances for use within electronic smoking devices; and 2) does not share indoor common space with other businesses unless there are doors from the vapor establishment to the indoor common space that remain closed other than for ingress and egress.

"Volunteer Fire Company" means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

8.0 Smoking Prohibitions

8.1 Except as is provided in section 3.1 of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke and emissions produced by electronic smoking devices, smoking shall not be permitted and no person shall smoke in any of the following areas:

8.1.1 Any enclosed indoor area, including, but not limited to, those listed in 16 **Del.C.** §2903, to which the general public is invited or in which the general public is permitted. This shall apply to any organization, business or establishment which caters to or offers goods or services or facilities to, or solicits patronage from the general public.

8.1.2 Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines.

8.1.3 Functions or activities of private clubs or organizations, as defined by Section 7.0 of these regulations, when access by the general public is allowed or solicited.

8.1.4 Any private vehicle used for the public transportation of children or as part of health care or day care transportation.

8.1.5 In private homes or private residences when such homes or residences are being used for child care or day care.

8.2 No owner of any indoor enclosed area subject to 16 **Del.C.** Ch. 29 and/or person(s) responsible for the management of such area or employee thereof, shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by section 3.1.

8.3 Vapor Establishments

8.3.1 Vapor establishments are permitted to have emissions produced by electronic smoking devices within their places of businesses.

8.3.2 Any vapor establishment permitted to have emissions produced by electronic smoking devices in such establishment pursuant to these regulations, and which permits such emissions, shall prohibit anyone under the age of 18 from entering.

9.0 Smoking Prohibitions Inapplicable

9.1 Smoking prohibitions shall not apply in the following:

9.1.1 Private homes, private residences and private automobiles,

9.1.2 Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

9.1.3 Limousines under private hire

9.1.4 A hotel or motel room rented to 1 or more guests provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (25%).

9.1.5 Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance company.

9.1.6 Any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 **Del.C.** §6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization.

9.1.7 Any enclosed indoor area operated or in use exclusively by a private club as defined in these regulations.

10.0 Posting of Signs

10.1 Failure to Properly Post and Maintain Signs

10.1.1 Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of 16 **Del.C.** Ch. 29 shall post signs which indicate "Warning: Smoking Permitted" prominently to indicate those locations where smoking is permitted pursuant to section ~~3.1~~ 9.1. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in section ~~5.1~~ 11.1 of the Clean Indoor Air Act Regulations.

10.1.2 Any vapor establishment permitted to have emissions produced by electronic smoking devices in such establishment pursuant to these regulations, and which permits such emissions, shall display a sign at all entrances stating that no one under the age of 18 is allowed in such a vapor shop. Failure to prominently

post at all entrances properly maintained signs with letters at least one (1) inch in height shall be a violation subject to administrative penalties as set forth in section 11.1 of the Clean Indoor Air Act Regulations.

11.0 Compliance and Enforcement Procedures

11.1 Administrative Penalties. Whoever violates any provision of these regulations shall be subject to an administrative penalty of $100.00 for the first violation and not less then $250.00 for each subsequent violation.

11.2 Right to Administrative Hearing. Upon due notice that the Department intends to assess an administrative penalty, as indicated in ~~5.1~~ 11.1, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.

11.3 Orders of the Department. Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Dept. of Health and Social Services, shall be fined not less than $100.00 and not more than $1,000.00, together with cost, unless otherwise provided by law.

6 DE Reg. 655 (11/1/02)
19 DE Reg. 169 (09/01/15) (Prop.)