

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))  
14 **DE Admin. Code** 877

### PROPOSED

### PUBLIC NOTICE

#### Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

#### 877 Tobacco Policy

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(2), the Secretary of Education intends to amend 14 **DE Admin. Code** 877 Tobacco Policy. The Department has reviewed the regulation to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be amended. Amendments include adding a purpose and definitions, expanding the scope of the regulation to include smoking, and aligning the regulation with 16 **Del.C.**, Chapter 29, Delaware's Clean Indoor Air Act.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 6, 2020 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, located at the address listed above.

#### C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation does not directly address student achievement as measured against state achievement standards.
2. Will the regulation help ensure that all students receive an equitable education? The amended regulation intends to help ensure all students receive an equitable education.
3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation ensures that all students' health and safety are adequately protected by providing guidelines for district and charter school tobacco and smoking policies.
4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision-making authority and accountability for addressing the subject to be regulated.
8. Will the regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this regulation.

#### 877 Tobacco and Smoking Policy

#### 1.0 Purpose

- 1.1 The purpose of this regulation is to specify for district and charter schools the elements of a required Tobacco and Smoking Policy, including specifying areas where the policy is in effect, and outlining reporting requirements and timelines.
- 1.2 This regulation aligns with 16 Del.C., Chapter 29, Delaware's Clean Indoor Air Act, and 11 Del.C., Chapter 5, Subchapter V.

## **2.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

**"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 or 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 or as this term may be amended by 16 Del.C. §2902.

**"Smoking"** means:

- a. The burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or
- b. The use of an Electronic Smoking Device which creates an aerosol or vapor, in any manner or in any form or as this term may be amended by 16 Del.C. §2902.

**"Tobacco Product"** means:

- a. Any product that is made from or derived from tobacco or that contains nicotine, including: cigarettes, cigars, pipe tobacco, hookah tobacco, chewing tobacco, snuff, snus, or smokeless tobacco and is intended for human consumption by any means including Smoking, heating, chewing, absorbing, dissolving, inhaling, or ingesting as this term may be amended by 11 Del.C. §1115; or
- b. A component or accessory used in the consumption of a Tobacco Product, including filters, rolling papers, and pipes or as this term may be amended by 11 Del.C. §1115.

Tobacco Product does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.) or as this term may be amended by 11 Del.C. §1115.

**"Tobacco Substitute"** means:

- a. An Electronic Smoking Device employing a mechanical heating element, battery, or circuit to produce aerosol or vapor for inhalation into the body of an individual or as this term may be amended by 11 Del.C. §1115, or
- b. A liquid used in a device under paragraph a. above, including liquids that contain nicotine and liquids that do not contain nicotine or as this term may be amended by 11 Del.C. §1115.

Tobacco Substitute does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) or as this term may be amended by 11 Del.C. §1115.

## **4.03.0 Required Policy**

- 3.1 ~~In order to~~ To improve the health of ~~students and~~ students, school personnel, and visitors, each school district and charter school in Delaware shall have a policy Tobacco and Smoking Policy which at a minimum:
- 4.13.1.1 Prohibits smoking and the use of or distribution of tobacco products and electronic smoking devices in school buildings, on school grounds, in school leased or owned vehicles, even when they are not used for student purposes, and at all school affiliated functions.
- 4.23.1.2 Includes procedures for communicating the policy to students, school staff, parents, guardians or ~~Relative Caregivers~~ relative caregivers, families, visitors and the community at large.
- 4.33.1.3 Makes provisions for or refers individuals to voluntary cessation education and support programs that address the physical and social issues associated with nicotine addiction.

## **2.04.0 The Tobacco and Smoking Policy Shall Apply to**

- 2.14.1 Any building, property or vehicle leased, owned or operated by a school district, charter school or assigned contractor.
- 2.14.1.1 School bus operators under contract shall be considered staff for ~~the purpose of~~ this policy.
- 2.24.2 Any private building or other property including automobiles or other vehicles used for school activities when students and staff are present.

- 2.34.3 Any ~~non-educational~~ non-educational groups utilizing school buildings or other educational assets.
- 2.44.4 Any individual or a volunteer who supervises students off school grounds.

**3.05.0 No School or School District Property May Be Used for the Advertising of any Tobacco Product, Tobacco Substitute or Electronic Smoking Device**

**4.06.0 Reporting Requirements and Timelines**

- 4.16.1 Each ~~public~~ school district and charter school shall have an electronic copy of its current ~~tobacco policy~~ Tobacco and Smoking Policy on file with the Department of Education.
- 4.26.2 Each ~~public~~ school district and charter school shall provide an electronic copy of any ~~tobacco policy~~ Tobacco and Smoking Policy within ninety (90) days of such ~~revision(s)~~ revisions regardless of whether said revisions were made as a result of changes to ~~Federal~~ federal, state or local law, regulations, guidance or policies.

**1 DE Reg. 1807 (05/01/98)**

**6 DE Reg. 1504 (05/01/03)**

**11 DE Reg. 1463 (05/01/08)**

**23 DE Reg. 419 (12/01/19) (Prop.)**