

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF PUBLIC HEALTH**  
**Statutory Authority: 16 Delaware Code, Section 122(1) and (3) a, f and j**  
**(16 Del.C. §122 (1) & (3) a, f & j)**

**PUBLIC NOTICE**

**461 Regulations Governing the Production and Sale of Milk and Milk Products**

**Nature of the Proceedings**

These regulations, *State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products*, replace by recision the current *State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products* adopted on March 10, 2003.

Pursuant to Title 16 **Delaware Code**, Chapter 1, §122 (1) and (3) a, f and j, the Department of Health and Social Services intends to adopt by reference the newest version of the U.S. Public Health Service/Food and Drug Administration's Grade A Pasteurized Milk Ordinance 2003 Revision (PMO). These Regulations establish standards for the production and sale of milk and milk products within the State of Delaware.

**Notice of Public Hearing**

The Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed *State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products*.

The public hearing will be held on March 23, 2005 at 10:00 a.m. in the 3<sup>rd</sup> Floor Conference Room of the Jesse Cooper Building located at the intersection of Federal and Water Streets in Dover Delaware. Copies of the proposed regulations are available for review by calling the following location:

Community Environmental Health (Mr. Ed Pettee)  
Williams State Service Center  
805 River Road  
Dover, DE 19901  
Telephone: (302) 739-5305

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David P. Walton at (302) 744-4700 by Tuesday, March 22, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony can fax them to David Walton at (302) 739-6659 or submit such comments by Thursday, March 31, 2005 to:

David P. Walton  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

**461 Regulations Governing the Production and Sale of Milk and Milk Products**

**1.0 General Provisions**

**1.2 Purpose**

It is hereby declared that the purpose of this Regulation is to protect, preserve and promote the public health and wellbeing of the people, to minimize the incidence of communicable diseases and to regulate the inspection of dairy farms, milk and milk product plants and provide for the examination, labeling, pasteurization, distribution and sale of milk and milk products. It is hereby further declared that the purpose of this Regulation is to establish minimum chemical, bacteriological and temperature standards for milk and milk products and an adequate level of operation and maintenance and provision for the administrative and enforcement thereof.

**1.3 Definitions**

Regulatory Agency: as defined in the PMO, Section 1, Definition II, shall mean the Secretary, Delaware Health and Social Services or his official designee.

#### 1.4 Application and Scope

The requirements of this section shall apply to the construction, alteration, addition, establishment maintenance and or the operation of all dairy farms, milk and milk product plants in the State of Delaware, and also to any milk and milk products from outside the boundaries of the state that are sold in Delaware.

The Regulatory Agency may grant a variance by modifying or waiving the requirements of these Regulations if in the opinion of the Regulatory Agency a health hazard or nuisance will not result from the variance or waiver.

Enforcement: It shall be the duty of the Regulatory Agency to enforce the provisions of these Regulations

Repeal and Date of Effect: All current or previous regulations or parts of regulations in conflict with these Regulations are hereby repealed; and these Regulations shall be in full force and effective on \_\_\_\_\_.

Severability: Should any section, paragraph, sentence, clause or phrase of these Regulations be declared unconstitutional or invalid for any reason, the remainder of the Regulation shall not be affected in any way.

#### 1.5 Imminent Danger to Public Health: Suspension of Permit

If some condition(s) is/are determined to exist which present(s) an imminent health hazard to the public, the Regulatory Agency may suspend the operating permit of the facility, without hearing, for a period not to exceed ten (10) government business days. The suspension shall be effective upon receipt of written notice by the permit holder or another reasonably responsible employee. A suspension statement recorded on an inspection report by the inspecting Regulatory Agency representative constitutes written notice. The permit shall not be suspended for a period longer than ten (10) government business days without a hearing. Failure to hold a hearing within ten (10) government business days shall automatically terminate the suspension.

The permit holder of the Facility may request, in writing, a hearing before the Regulatory Agency at any time during the period of suspension, for the purpose of demonstrating the imminent health hazard(s) no longer exist. The request for hearing shall not stay the suspension.

#### 1.6 Unsanitary Conditions: Suspension, Revocation or Refusal to Reissue Permit

The Regulatory Agency, may after providing an opportunity for a hearing, suspend, for a period not to exceed ninety (90) days, revoke, or recommend non-reissuance of a permit to operate a Facility for serious or repeated violations of any requirements of these Regulations or refusing access to representatives of the Regulatory Agency.

This section is not intended to preclude enforcement of this Regulation through the institution of court action by the Regulatory Agency.

#### 1.7 Global Footnote Clarification

Whereas indicated in the PMO as footnote 2, page v, of the introduction and footnote 1, pages 1, 8, 9 and 113 of the body, insert "the State of Delaware".

### **2.0 Grade "A" Pasteurized Milk Ordinance 2003 Revision**

This section incorporates by reference the U.S. Public Health Service/Food and Drug Administration's Grade "A" Pasteurized Milk Ordinance, 2003 Revision. For copies contact the Division of Public Health or the Registrar of Regulations.

**8 DE Reg. 1255 (3/1/05)**