

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u (16 **Del.C.** §122(3)u)
16 **DE Admin. Code** 4461

FINAL

PUBLIC NOTICE

4461 State of Delaware Milk Code Regulations

Nature of the Proceedings:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the 2011 State of Delaware Milk Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Del.C.** §§ 122(3)u.

On March 1, 2011 (Volume 14, Issue 9), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 30, 2011, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying “Summary of Evidence.”

Summary of Evidence

In accordance with Delaware Law, public notice regarding proposed Department of Health and Social Services (DHSS) 2011 State of Delaware Milk Code was published in the *Delaware Register of Regulations* on March 1, 2011 (Volume 14, Issue 9).

The public comment period was open from March 1, 2011 through March 30, 2011. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

The regulation has been approved by the Delaware Attorney General’s office and the Cabinet Secretary of DHSS.

Findings of Fact:

There were no public comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed 2011 State of Delaware Milk Code is adopted and shall become effective May 10, 2011, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

~~4461 Milk And Milk Products (Pasteurized Milk Ordinance)~~

1.0 General Provisions

1.1 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.~~

1.2 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.~~

1.3 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 May 10, 2005.
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.

1.4 ~~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.~~

1.5 ~~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.~~

1.6 ~~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.~~

~~6 DE Reg. 1220 (3/1/03)~~

~~8 DE Reg. 1615 (5/1/05)~~

4461 State of Delaware Milk Code

1.0 State of Delaware Food Code

1.1 Name. These Regulations shall hereby be known as the "State of Delaware Milk Code".

1.2 Variance. 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.

1.3 Location. A copy of the complete State of Delaware Milk Code is available for public view at the following location: Office of Food Protection, 417 Federal Street, Dover, Delaware 19903. A copy is also available online at

<http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSMModelDocuments/UCM209789.pdf>

2.0 Adoption of United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance 2009 Revision.

2.1 The State of Delaware Milk Code adopts, as if fully set forth herein, the United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance 2009 Revision as amended herein. The production, transportation, processing, handling, sampling, examination, labeling and sale of all Grade "A" milk and milk products sold for the ultimate consumption within the State of Delaware; the inspection of dairy farms, milk plants, receiving stations, transfer stations, milk tank truck cleaning facilities, milk tank trucks and bulk milk

hauler/samplers; and the issuing and revocation of permits to milk producers, bulk milk hauler/samplers, milk tank trucks, milk transportation companies, milk plants, receiving stations, transfer stations, milk tank truck cleaning facilities, haulers, and distributors shall be regulated in accordance with the provisions of the current edition of the Grade "A" PMO.

- 2.2 Insert as footnote 1 the phrase "State of Delaware".
- 2.3 Amend Section 1, Subpart JJ "Regulatory Agency" by deleting the first sentence in its entirety and substituting in lieu thereof the following, "The Regulatory Agency shall mean the Secretary of the Delaware Department of Health and Social Services or their authorized representative."
- 2.4 Amend Section 3 by deleting the phrase "seventy-two (72) hours" as it appears therein and substituting in lieu thereof the following "ten (10) government business days".
- 2.5 Amend Section 16 by deleting the section in its entirety and substituting in lieu thereof the following, "Any person who shall violate any of the provisions of these Regulations shall be penalized in accordance with these Regulations and Title 16 of the Delaware Code."
- 2.6 Amend Section 17 by deleting the section in its entirety and substituting in lieu thereof the following, "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 effect on May 10, 2011."

14 DE Reg. 1232 (05/01/11)