

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)u.1 (16 Del.C. §122(3)u.1)

**FINAL**

**ORDER**

**4458 State of Delaware Food Code Regulations**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Food Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, §122 (3) u.1. (e).

On March 1, 2014 (Volume 17, 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 31, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

**FINDINGS OF FACT:**

Non-substantive changes were made to the proposed regulations. 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 4458 State of Delaware Food Code is adopted and shall become effective May 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

**SUMMARY OF EVIDENCE**

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing the State of Delaware Food Code were published in the *Delaware State News*, the *News Journal* and the Delaware *Register of Regulations*.

Entities offering written comments include:

Vicky Fountain

Public comments and the DHSS (Agency) response are as follows:

**Vicky Fountain:**

Regarding the “Person in charge certification requirement” (copied below)

*Person in charge certification requirement – The Delaware Food Code will now require that the person in charge of a food establishment be certified through an accredited food protection manager certification program. DPH is considering offering Delaware establishments a grace period beyond the implementation of the new code for this requirement.*

1. How are we defining the “person in charge”? Is it the manager on duty? The business owner? The property owner?
2. I can't help feeling concerned that this requirement is both an additional step towards government interference in citizens' everyday lives, as well as an additional avenue to create revenue for the State via whatever costs are associated with obtaining this certification. Business owners – and restaurant owners especially – are already over-burdened with regulations and fees. I can say from personal experience, that my husband and I were considering opening a bakery, until we actually began the process and were promptly discouraged by the amount of hoops the government would have required us to jump through, and the astronomical cost of opening a new food establishment. We felt so unsupported by the local and State government, that we gave up completely, even though our community, friends, and neighbors all wanted us to open a bakery, and it would have been an excellent source of commerce in our town.

3. If the State is truly concerned about the education of the “people in charge” of restaurants, then this certification program should be offered *free of charge*, on the State’s dime. And yes, a grace period should be offered, that is the only decent thing to do.

**Agency Response:** The Agency appreciates and acknowledges these comments. *Person in charge* is defined in the regulations as “the individual present at a FOOD ESTABLISHMENT who is responsible for the operation at the time of inspection.” While DPH understands that the training requirement for the Person in charge is an additional step that business owners face, the requirement will standardize the knowledge required to oversee safe food establishment operations.

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) State of Delaware Food Code were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from March 1, 2014 through March 31, 2014. Written comments were received on the proposed regulations during the public comment period. Non-substantive changes were made to the proposed regulations.

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

#### **4458 State of Delaware Food Code Regulations**

**Please Note: Due to the size of the final regulation it is not being published here. The following url’s are provided for those that wish to obtain the final Food Code.**

<http://regulations.delaware.gov/register/may2014/final/TOC.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Chapter1.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Chapter2.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Chapter3.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Chapter4.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Chapter5.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Chapter6.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Chapter7.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Chapter8.pdf>  
<http://regulations.delaware.gov/register/may2014/final/Index.pdf>  
**17 DE Reg. 1084 (05/01/14) (Final)**