

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH
Statutory Authority: 16 Delaware Code, Section 122 (16 **Del.C.** §122)
16 **DE Admin. Code** 4461

PROPOSED

PUBLIC NOTICE

4461 State of Delaware Milk Code

Pursuant to 16 **Del.C.** §122, the Health Systems Protection section within the Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Milk Code, as described in subsection 2.1 of this regulation. A summary of the major changes can be found below:

Item 12r	Positive ventilation during cleanings in automatic milking installation (AMI) milking unit rooms may not be required in installations where AMI milking rooms are separated from the housing unit.
Section 3	The following clarification language was added. Food manufacturing facilities that are only receiving Grade "A" milk products for use as an ingredient in another food that is not a Grade "A" milk product defined in the Ordinance are exempt from the permit requirements of Section 3.
FDA Forms	The following Food and Drug Administration (FDA) forms used during ratings have been updated: <ul style="list-style-type: none">• Form 2359 - Milk Plant Inspection Report• Form 2359d - Report of Certification• Form 2359i - Interstate Milk Shippers (IMS) Report• Form 2359j - Milk Sanitation Rating Report• Form 2359L - Status of Milk Plants• Form 2359p - National Conference on Interstate Milk Shipments (NCIMS) Aseptic Processing and Packaging Program and Retort Processed After Packaging Program Critical Listing Elements
Section 5	Industry plant samplers have been added to the list of approved certified industry inspections that can be conducted cooperatively.
Appendix N	A definition section and flowcharts have been added to Appendix N of the code to standardize the understanding of the testing requirements of raw milk.
MMSR	Milk plants not in compliance with Appendix T during re-inspections will not be removed from the IMS list. Instead, corrections to be implemented by the facility will be jointly developed with the FDA and the State regulatory authority.

Delaware is proposing amendments to the 2015 Delaware milk code by incorporating, by reference, all model documents from the 2023 NCIMS. This includes the FDA Grade "A" Pasteurized Milk Ordinance, 2023 revision; Procedures Governing the Cooperative State-Public Health Service/FDA Program of the NCIMS, 2023 revision; Evaluation of Milk Laboratories, 2023 revision and Methods of Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufacturers, 2023 revision.

Copies of the proposed regulations are available for review in the March 1, 2025 issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at 302-744-

Public comments will be accepted until 4:30 PM on April 2, 2025. Comments will be accepted in written form via email to DHSS_DPH_regulations@delaware.gov, or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901

4461 State of Delaware Milk Code

1.0 State of Delaware ~~Feed~~ **Milk** Code

- 1.1 ~~These Regulations~~ This regulation shall hereby be known as the "State of Delaware Milk Code".
- 1.2 The ~~Regulatory Agency~~ regulatory agency may grant a variance by modifying or waiving the requirements of ~~these Regulations~~ this regulation if in the opinion of the ~~Regulatory Agency~~ regulatory agency a health hazard or nuisance will not result from the variance or waiver.
- 1.3 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~~ 43 S. DuPont Hwy., Suite C, Dover, DE 19901. A copy is also available online at:
<http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSModelDocuments/UCM209789.pdf>
<https://www.fda.gov/media/180975/download?attachment>

2.0 Adoption of the United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance ~~2015~~ **2023** 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 ~~2015~~ 2023 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: in Section 2.0 of this regulation. This regulation shall apply to dairy plants, dairy farms, processing plants, receiving stations and other facilities or establishments handling, transporting, or selling any Grade "A" milk or milk products for human consumption.~~
- 2.2 Insert as footnote 2 the phrase "State of Delaware".
- 2.3 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~~ this regulation shall be penalized in accordance with ~~these Regulations~~ this regulation and Title 16 of the Delaware Code."
- 2.4 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 regulations in conflict with ~~these Regulations~~ this regulation, as proposed in the Delaware Register of Regulations on March 1, 2025, are hereby repealed and ~~these Regulations~~ this regulation shall be in effect ~~on July 1, 2017~~ ten days after publication of the final regulation in the Delaware Register of Regulations, whichever is later."

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

20 DE Reg. 985 (06/01/17)

28 DE Reg. 655 (03/01/25) (Prop.)