

DEPARTMENT OF AGRICULTURE

FOOD PRODUCTS INSPECTION

Statutory Authority: 3 Delaware Code, Section 101(1), (3) and (6) (3 **Del.C.** §101(1), (3) & (6))
3 **DE Admin. Code** 302

PROPOSED

PUBLIC NOTICE

302 Produce Safety Regulations

Notice of Proposed Amendments to Regulations of the Department of Agriculture

Summary

The Department of Agriculture proposes to amend its Regulations adopted in accordance with Title 3, Chapter 1 of the Delaware Code to revise the existing Produce Safety Regulations at 3 DE Admin. Code 302. The purpose of the amended regulations is to revise sections 3.1 and 3.4 to better address compliance of regulated farms with the federal regulations promulgated under the Food Safety Modernization Act (Title 21, Part 112 of the Code of Federal Regulations). Other regulations issued by the Department of Agriculture are not affected by this proposal. The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. Statutory Authority: 3 Delaware Code, Section 101(1), (3) & (6) (3 *Del.C.* §101(1), (3) & (6)). This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the May 1, 2021 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before June 1, 2021. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after June 1, 2021, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Department of Agriculture, the amendments shall take effect ten days after being published as final in the *Delaware Register of Regulations*.

Delaware Department of Agriculture

Andrea Jackson

Food Products Inspection Administrator

302 Produce Safety Regulations

1.0 Authority

These regulations related to the federal Food Safety Modernization Act's Produce Safety Rule are promulgated pursuant to the authority provided in 3 **Del.C.** § 101 (1), (3), and (6).

2.0 Purpose

The Department of Agriculture has enforcement responsibility for the Produce Safety Rule of the Food Safety Modernization Act (FSMA), Title 21, Part 112 of the Code of Federal Regulations. The purpose of these proposed regulations is to establish the procedures for farm registration, produce inspection, on-farm produce and environmental sampling, and addressing non-compliance of regulated farms as currently appear in the FSMA and as the FSMA may be

amended from time to time.

3.0 Registration

- 3.1 In order to determine the farms subject to the Food Safety Modernization Act Produce Safety Rule, the Department of Agriculture will require that all farms within Delaware that grow, harvest, pack, or hold produce intended for human consumption and for sale, register with the Department of Agriculture.
- 3.2 The registration form, available from the Department of Agriculture, shall include at a minimum the following required fields:
 - 3.2.1 Name
 - 3.2.2 Address
 - 3.2.3 Farm Location(s)
 - 3.2.4 Telephone number and email address of owner/producer
 - 3.2.5 Approximate average annual income from produce sales
 - 3.2.6 Description of all produce grown
 - 3.2.7 Seasonal Growing Period
- 3.3 The registration form may include additional fields as determined by the Department of Agriculture.
- 3.4 Forms will be provided by the Department of Agriculture and must be returned to the Department of Agriculture, annually by April 30th upon completion. The Department of Agriculture may provide the registration forms in electronic format. Other timely information may also be sent to the registrants.

4.0 Inspections

- 4.1 Department of Agriculture personnel are authorized, at any time, to enter any farm or facility that grows, harvests, packs or holds produce for human consumption to:
 - 4.1.1 Inspect the farm or facility to determine whether the rules promulgated under these regulations are being violated.
 - 4.1.2 Request to review and copy the farm or facility's records pursuant to the federal regulations on recordkeeping.
 - 4.1.3 Secure and test samples as needed to verify compliance.
- 4.2 Inspection Results will be given in an Inspectional Report form.

5.0 Product Retention and Condemnation

- 5.1 In the event that the Department of Agriculture discovers produce that is contaminated, unfit for consumption, or otherwise in violation of these regulations, the Department of Agriculture is authorized at all times to seize, take possession of, condemn, destroy, or require the destruction of any covered produce that the Department of Agriculture believes to be in violation of 21 C.F.R Part 112. Enforcement actions may continue to be imposed until corrective actions are taken by the owner/producer in violation.
- 5.2 If objectionable conditions are found, the Inspector (working under federal authority) is obligated to report the findings to the Food and Drug Administration (FDA) and work in collaboration with FDA to control/rectify the situation.

6.0 Program Termination

These regulations shall remain in effect for the duration of the federal Food Safety Modernization Act's Produce Safety Rule. If the federal Produce Safety Rule is abolished, then the Department of Agriculture may also abolish these regulations.

7.0 Violations and Hearing Procedures

- 7.1 Failure to comply with this chapter shall result in the assessment of a civil penalty.
- 7.2 No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or the Secretary's designee. No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29 of the Delaware Code. The Secretary or the Secretary's designee shall mail a written decision to the alleged violator within 30 days after the conclusion of the administrative hearing. Failure to comply with the 30-day period shall have no effect on the Secretary's or designee's decision.

- 7.3 The person(s) charged with a violation of these regulations will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel and to provide witnesses in his or her behalf.
- 7.4 The Secretary or the Secretary's designee, for the purposes of investigation of a possible violation of these regulations and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.
- ~~7.4.4~~ The Department of Agriculture shall preserve a record of the proceedings and a transcript may be purchased by any interested person.

8.0 Appeal

A person who feels aggrieved by the Department of Agriculture as a result of the administrative hearing held under the authority of this chapter may file an appeal, within 30 days, with the Superior Court. Written notice of such appeal, together with the grounds therefor, shall be served upon the Secretary of the Department of Agriculture.

9.0 Civil Penalties

- 9.1 Any person who interferes with the Department of Agriculture in the enforcement of this chapter, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.2 Any person who is not a Department of Agriculture employee or its authorized representative who removes markings placed by the Department of Agriculture for the purpose of identification is interfering with the Department of Agriculture's enforcement of these regulations, as determined in an administrative hearing, and shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.3 Any person(s) who willfully or knowingly ships contaminated produce, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.4 Any person(s) who refuses to comply with these regulations shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 for each violation.
- 9.5 The payment of penalties assessed under this chapter may be made on a payment schedule approved by the Secretary or the Secretary's designee.

22 DE Reg. 997 (06/01/19)

24 DE Reg. 964 (05/01/21) (Prop.)