

<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b> RECEIVED 99 JUL 19 PM 3: 31 DEPARTMENT OF AGRICULTURE REGULATORY DIVISION  <b>Harbison</b>  IRRC Number: 1858	
(1) Agency  Department of Agriculture			
(2) I.D. Number (Governor's Office Use)  2-107			
(3) Short Title Food Employee Certification			
(4) PA Code Cite  7 Pa. Code Chapter 76		(5) Agency Contacts & Telephone Numbers  Primary Contact: Martha M. Melton (717) 782-8354 Secondary Contact: Leroy C. Corbin, Jr. (717) 787-4315	
(6) Type of Rulemaking (check one)  Proposed Rulemaking Final Order Adopting Regulation XXXXXX Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached?  No XXXXXX Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  The Food Employee Certification Act (3 Pa.C.S. §§ 6501-6510) (Act) requires that – effective July 1, 2001 – most food establishments in the Commonwealth have at least one “supervisory employee” who has undergone food safety training and passed a written examination evidencing food safety knowledge. The regulation will describe the standards and procedures pursuant to which the Department would approve certification training programs and certify supervisory employees.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  The Food Employee Certification Act (3 Pa.C.S. §§ 6501-6510) is the statutory authority for the regulation.			

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation is required under the Act (at 3 Pa.C.S. § 6505).

The regulation is necessary in order to establish the mechanisms pursuant to which food safety training courses can be approved by the Department and pursuant to which the Department can certify “supervisory employees” of food establishments in accordance with the Act. The overall effect of the regulation should be to help safeguard the health of persons who eat food originating from affected food establishments. The regulation should also serve to protect the health of employees working in such food establishments.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation might result in continued cases of foodborne illness caused by lack of education in food safety and sanitation in the food industry.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All food industry personnel will benefit from the dissemination of food safety knowledge through their ranks. This will help protect the health and safety of both food industry personnel and consumers. The regulation is likely to result in a decrease in poor sanitation and food handling practices, and a corresponding increase in the safety and quality of food products originating from affected food establishments.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No persons are expected to be adversely affected by the regulation. To the extent individuals or food establishments might incur costs in obtaining required training, these costs are imposed by the Act, rather than the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

At least one supervisory employee in each affected food establishment shall be required to comply with the regulation. This requirement is imposed by the Act. It is estimated that there are approximately 35,000 such food establishments in the Commonwealth, and that this same number of supervisory employees will be required to undergo training and certification in accordance with the Act and the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Act, itself, was an industry-driven initiative. In the process of developing the final-form regulation, the Department distributed drafts and invited comments from a cross-section of food industry interests. Among these interests were the Pennsylvania Food Processors Association, the Pennsylvania Food Merchants Association, Health agencies from Chester, Erie and Montgomery, Bucks and Allegheny Counties, the Pennsylvania Farm Bureau, the Pennsylvania Restaurant Association, the Pennsylvania Association of Milk Dealers, and others.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are approximately 35,000 food establishments in the Commonwealth which will be required to comply with the Act by July 1, 2001. The fee for certification of a supervisory employee is \$20 (See the Act, at 3 Pa.C.S. § 6509(b)). The minimum cost to the regulated community, therefore, will be \$700,000. This does not include the costs of training the 35,000 supervisory employees. It is likely that - in many instances - the training will be offered for free or at cost by food industry organizations.

Food establishments should benefit from a reduction in legal claims resulting from foodborne illness as a result of the implementation of the regulation. The amount of these savings is not readily estimable, but is expected to exceed the costs of training and certification.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation is not expected to result in an appreciable costs or savings to local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

It is estimated the Department of Agriculture will incur clerical and record keeping costs of approximately \$30,000 in the year 2001 – the first year certification under the Act becomes mandatory. This cost will be incurred in subsequent years, as well.

Until 2001, the Department expects voluntary compliance with the regulation by food establishments to proceed on an even pace. The estimated costs to the Department are set forth in Answer No. 20.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	1999-2000	2000-01	2001-02	2002-3	2003-4	2004-5
* = not estimable						
	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated</b>	*	*	*	*	*	*
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	*	*	*	*	*	*
<b>COSTS:</b>						
<b>Regulated</b>	*	700,000	*	*	*	*
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	15,000	30,000	30,000	30,000	30,000	30,000
<b>Total Costs</b>	15,000+	730,000	30,000+	30,000+	30,000+	30,000+
<b>REVENUE LOSSES:</b>						
<b>Regulated</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Although the regulated community is expected to experience some decrease in legal claims related to foodborne illness as a result of the regulation, these savings are not readily measurable.

Food establishments are not *required* to comply with the Act or the regulation until July 1, 2001. By that date industry will have expended approximately \$700,000 (35,000 food establishments, multiplied by the \$20-per-certificate fee for certification of a supervisory employee) on certification fees. It is expected that many food establishments will voluntarily come into compliance with the Act and the regulation well in advance of that date. The cost of putting supervisory employees through approved certification training programs is not readily measurable.

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

This is a new program, with no prior expenditure history.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Although there are no adverse effects expected as a result of promulgation of the regulation itself, the Act will require approximately 35,000 food establishments to incur the \$20-per-person fee for certification of supervisory employees, as well as any costs associated with obtaining required training for these individuals. These costs are expected to be offset by a decrease in the number of legal claims relating to foodborne illness. The regulation will benefit public health and help bolster confidence in the Commonwealth's food production industry.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal

No nonregulatory alternatives were considered, since regulations are required under the Act (at 3 Pa.C.S. §§ 6503(d) and 6505).

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. The Federal government does not have standards requiring the training or certification of food industry employees.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Most states do not have a food employee certification program. Approximately 8 States, plus the District of Columbia, have food employee certification regulations. The Act provides (at 3 Pa.C.S. § 6505) for reciprocity with other States that have similar programs and training standards.

The regulation does not place the Commonwealth of Pennsylvania or its food industry at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No. The Department circulated drafts of the proposed regulation among a cross section of interested groups (See Answer No.16), and considered their comments in drafting the proposed regulation and the final-form regulation. Against this backdrop, the Department is satisfied that interested persons have had an adequate opportunity to help shape the final-form regulation.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Food establishments affected by the Act will have to retain certain records with respect to their certified supervisory employees. The names, certificate numbers and other related information with respect to these individuals must be retained for at least four months. The Department will make standardized forms available to simplify these requirements to the extent practicable.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Although the Department intends the regulation to take effect at the earliest date consistent with the requirements of the Regulatory Review Act, the Food Employee Certification Act requires that compliance with that statute or this regulation remain *optional* until July 1, 2001.

(31) Provide the schedule for continual review of the regulation.

The efficacy of this regulation will be evaluated on an ongoing basis, and as part of the Bureau of Food Safety and Laboratory Services' annual review of the regulations it administers.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

# 1858

08 JUL 19 11 3: 31

REVENUE DEPARTMENT

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Department of Agriculture  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 2-107

DATE OF ADOPTION 7/9/99

By: Samuel E. Hayes, Jr.

Samuel E. Hayes, Jr.

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality Executive or Independent Agency

BY \_\_\_\_\_

7/14/99

DATE OF APPROVAL

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING**

**TITLE 7. AGRICULTURE  
PART III. BUREAU OF FOOD SAFETY AND LABORATORY SERVICES  
CHAPTER 76. FOOD EMPLOYEE CERTIFICATION**

**Title 7 – Agriculture  
DEPARTMENT OF AGRICULTURE  
[70 PA. CODE CH. 76]  
Food Employee Certification**

The Department of Agriculture (Department) hereby establishes the regulation relating to food employee certification at 7 Pa. Code Chapter 76.

***Authority***

The Food Employee Certification Act (3 Pa.C.S. §§ 6501-6510) (Act) provides the legal authority for this regulation. The provisions of the Act at 3 Pa.C.S. §§ 6503(d) and 6505 (relating to certification advisory board and programs; and rules and regulations), respectively: (1) require the Department to adopt food safety protection and training standards for the certification of supervisory employees who are responsible for the storage, preparation, display or serving of food to the public in establishments regulated by the Department or local health organizations; and (2) delegate to the Department the power to adopt regulations necessary for the proper enforcement and administration of the Act.

***Need for the Regulation***

The Act requires this regulation, at 3 Pa.C.S. § 6505.

In addition, the Act requires (at 3 Pa.C.S. § 6504(c)) that food establishments come into compliance with the requirements of the Act by July 1, 2001. The regulation provides a detailed explanation of these requirements, and sets forth the standards and procedures pursuant to which these requirements are to be implemented. The Act was the product of an industry-driven initiative to establish minimum food safety training requirements to be met by at least one supervisory employee in most food establishments in the Commonwealth. These requirements are specific to the category of food establishment involved. The promulgation of this regulation will allow affected food establishments almost two years within which to become familiar with the requirements of the regulation and arrange for the appropriate training and testing of supervisory employees in order to meet this July 1, 2001 compliance deadline.

In summary, the Department is satisfied there is a need for this regulation.

***Comments***

Notice of Proposed Rulemaking was published at 27 *Pennsylvania Bulletin* 2936 (June 21, 1997), and provided for a 30-day public comment period.

Comments were received from Representative Raymond Bunt, Jr., Chairperson of the House Committee for Agriculture and Rural Affairs (House Committee), the Independent Regulatory Review Commission (IRRC), Representative David J. Steil, Representative Matthew N. Wright, the Pennsylvania Food Merchants Association (PFMA), the Erie County Department of Health (ECDH), Health Regulation Compliance, Inc. (HRC), the Pennsylvania Restaurant Association (PRA), the Chester County Health Department (CCHD), the Allegheny County Health Department (ACHD), Radnor Township and Giant Food Stores, Inc. (Giant Foods).

**Comment:** Representative Steil offered a general comment in support of the proposed regulation and urged the Department to move forward expeditiously to promulgate the final-form regulation. Representative Wright also offered general support for the regulation.

**Response:** The Department is moving forward with the referenced final-form regulation.

**Comment:** HRC suggested the final-form regulation be entitled “Food Manager Certification” or “Supervisory Employee Certification.”

**Response:** The Department declines to implement this suggestion, in order to keep the final-form regulation consistent with the title of the Act.

**Comment:** HRC commented that the mandatory compliance period of July 1, 2001 set forth in proposed § 76.1(a) (relating to compliance) is too far distant, and that compliance should be required sooner than that date. Representative Wright also raised this concern.

**Response:** The Act prescribes this mandatory compliance date (at 3 Pa.C.S. § 6504(c)). Although the Department will encourage voluntary compliance in advance of that date, it cannot change this statutory deadline by regulation.

**Comment:** Section 76.1(d)(1) of the proposed regulation would exempt food establishments where only commercially prepackaged food is handled and sold from having to comply with the regulation. IRRC, EDH, and HRC asked whether this would allow a retail food store that offers only *potentially hazardous* prepackaged food to its customers to be exempt from the regulation. HRC suggested the paragraph be revised to exempt food establishments that offer only “prepackaged *non-potentially hazardous* foods.”

**Response:** A retail food store that offers only commercially prepackaged food is exempt from the requirements of the Act and this regulation – regardless of whether some portion of the prepackaged food offered by the retail food store is potentially hazardous food. The referenced exemption is prescribed by the Act, at 3 Pa.C.S. § 6510(a). For this reason, the Department declines to implement the commentators’ suggestion.

**Comment:** CCHD offered general objection to the extensive list of terms and definitions set forth in proposed § 76.2 (relating to definitions). CCHD thought many of the terms were unnecessary, or would be more properly included in a separate State Food Code. CCHD also offered that many of the terms defined in this section are not defined

in the FDA Food Code. CCHD also offered that the list of defined terms in this section is incomplete.

**Response:** The Department does not intend §76.2 of the final-form regulation to present an exhaustive list of every term related to food safety, or to override any provisions of the FDA Food Code. The Department seeks to provide clarification of the many terms it uses throughout the text of the final-form regulation. The definitions originate from the Act, the FDA Food Code, technical texts and other food science information sources.

**Comment:** IRRC recommended deleting the qualifying phrase “unless the context clearly indicates otherwise” from the initial sentence of proposed § 76.2.

**Response:** The referenced qualifying phrase has been deleted from the final-form regulation.

**Comment:** IRRC and PRA commented on the definition of “Foodborne disease outbreak” at § 76.2 of the proposed regulation. That term includes “a single case of illness such as one person ill from botulism or chemical poisoning.” PRA offered the opinion this phrase was not consistent with the 1997 FDA Food Code, and should be deleted. IRRC requested the Department review the 1997 FDA Food Code and make sure the definition of this definition is consistent with the Federal definition.

**Response:** The Department reviewed the recently-released 1999 FDA Food Code and incorporated its definition of “Foodborne disease outbreak” into the final-form regulation.

**Comment:** PFMA suggested the Department define “majority of a quorum of the advisory board” in § 76.2 of the final-form regulation.

**Response:** The Department accepts this comment, but has inserted the suggested clarification in § 76.18 of the final-form regulation (relating to advisory board).

**Comment:** ECDH suggested that the definition of “Potentially hazardous food” in proposed § 76.2 is incomplete, and should address eggs, cut or peeled fruit or vegetables, and garlic or oil mixtures that are not preserved.

**Response:** ECDH is correct in that the FDA Food Code addresses the referenced foods under its definition of “Potentially hazardous food.” The Department has not revised its definition of this term in the final-form regulation, though, since the definition is prescribed by the Act, at 3 Pa.C.S. § 6502. The first sentence of § 76.2 resolves any difference between a defined term set forth in that section and a defined term in the FDA Food Code in favor of the FDA Food Code. For this reason, although the Act prescribes a particular definition of “Potentially hazardous food”, the expanded FDA Food Code definition may be applied.

**Comment:** ECDH requested clarification of the definition of a “Supervisory employee” in proposed § 76.2. Specifically, ECDH expressed concern that a person might hire himself or herself out to a number of different food establishments as a “certified supervisory employee” for purposes of the Act. ECDH also asked for clarification of the phrase “designated by the business owner.”

**Response:** The commentator's point is well taken. The definition of "supervisory employee" is prescribed by the Act, at 3 Pa.C.S. § 6502. However, the Act also clarifies (at 3 Pa.C.S. § 6503(d)) that the certified supervisory employee must be "...responsible for the storage, preparation, display or serving of foods to the public...", and must also have "supervisory authority" (at 3 Pa.C.S. § 6504(a)). The Department has added this statutory clarification to the definition.

The Department believes the phrase "designated by the business owner" is self-explanatory.

**Comment:** IRRC recommended the definition of "temperature danger zone" in proposed § 76.2 be revised to reflect temperatures in both degrees Celsius and degrees Fahrenheit. Radnor Township asked whether the temperatures set forth in the proposed regulation would be revised in the final-form regulation to conform to the FDA Food Code.

**Response:** The Department has revised the definition of this term in the final-form regulation by deleting references to specific temperatures. This revision was prompted by both the comments and the Department's expectation that the FDA Food Code will ultimately prescribe temperatures different from those originally proposed by the Department.

**Comment:** CCHD suggested proposed §76.3(a)(2) (relating to requirements for food establishments) be revised to reflect the industry-specific category of food establishment described in that paragraph be a food service that prepares "and/or" serves potentially hazardous foods to the consumer.

**Response:** The Department has implemented this suggestion in the final-form regulation.

**Comment:** CCHD and ACHD expressed concern over the industry-specific categories of food establishments set forth in proposed § 76.3(a)(1)-(5). ACHD raised questions as to the relevance of having different industry-specific categories, and made the point that a person with a good grasp of the causes of foodborne illness should be able to apply that knowledge in more than one segment of the food industry without having to take a separate training course. CCHD also questioned the relevance of these separate categories, and asked which certification programs and hours would be acceptable for each of these industry-specific categories.

**Response:** The Act requires (at 3 Pa.C.S. § 6503(d)) the completion of "industry-specific training programs" by supervisory employees seeking certification under that statute. This language leaves the Department to define – by regulation – the appropriate industry-specific categories. ACHD is correct in that the basic science of food safety and procedures for the prevention of foodborne illness apply from one industry-specific category of food establishment to the next. The Act requires the Department fine-tune this training to the extent possible, though. The Department believes the categories listed at § 76.3(a)(1)-(5) of the final-form regulation are reasonable. The Department will remain receptive to suggested revisions as it implements this regulation. If experience proves another set of categories would be more workable, the Department will revise this regulation to adopt these categories.

In response to CCHD's question, the final-form regulation does not identify the specific certification training programs that are appropriate for each industry-specific category of food establishment. The final-form regulation allows persons to apply for and obtain approval of certification training programs. It is quite likely that the Department will approve some certification training programs as adequate for most – if not all – of the industry-specific categories of food establishments. In other words, it is possible a single certification training program may be approved by the Department as adequate for all 5 industry-specific categories of food establishments. In response to CCHD's comment, § 76.5(d)(3) of the final-form regulation (relating to certification training programs: obtaining the department's approval) has been revised to reflect that an application for certification training program approval may seek approval under more than one of the industry-specific categories of food establishments.

**Comment:** CCHD offered the suggestion that a new industry-specific category of food establishment - for mobile and/or temporary food facilities – be added at § 76.3 (a). CCHD feels these operations often “pose considerable public health-communicable disease concerns”.

**Response:** The Department declines to implement this suggestion in the final-form regulation. A mobile or temporary food facility would fit within one of the 5 industry-specific categories at § 76.3(a) of the final-form regulation. If subsequent experience shows there would be some advantage to creating the suggested category, the Department will revisit this regulation.

**Comment:** IRRC and Radnor Township noted that a single food establishment might fall into more than one of the industry-specific categories set forth at § 76.3(a), and that § 76.3(b) requires a food establishment to have at least one certified supervisory employee who is certified with respect to the industry-specific category of the food establishment. The logical question: If a grocery store also contains a bakery that produces potentially hazardous food and has a counter where food is prepared and served, would it be necessary for such a grocery store to have a supervisory employee, or supervisory employees, with certifications in each of the industry-specific categories applicable to the store? IRRC stated “the Department needs to clarify the requirements for food establishments that could qualify under more than one industry-specific category.”

**Response:** The answer to the question posed is “yes.” If a single store falls within multiple industry-specific categories, it must have a certified supervisory employee who is certified with respect to *each* of those industry-specific categories. This requirement is not expected to be unduly burdensome or onerous, though, in light of the fact that a single certification training program may be approved as acceptable training for certification in more than one industry-specific category of food establishment.

In response to the comment, § 76.3(b) of the final-form regulation has been revised to clarify the issues raised by the commentators.

**Comment:** PFMA suggested proposed § 76.3(b) be revised to clarify that a certified supervisory employee should be responsible for implementing company policies, procedures and standards for the prevention of foodborne illness.

**Response:** Although the Department has not implemented the exact suggestion offered by the commentator, it has revised the definition of “supervisory employee” at § 76.2 of the final-form regulation to incorporate references to the “supervisory authority” of such an employee and the general responsibilities of such an employee set forth in the Act, at 3 Pa.C.S. §§ 6504(a) and 6503(d), respectively.

**Comment:** CCHD offered the opinion that the phrase “or designate” in proposed § 76.3(b) would create a “loophole” by which a person who is not an employee or on full-time status could be a food establishment’s “certified supervisory employee.”

**Response:** Section 76.3(b) of the final-form regulation includes the phrase “or designate” because that phrase is contained in the definition of “supervisory employee” set forth in the Act, at 3 Pa.C.S. § 6502.

**Comment:** Radnor Township asked whether a certified supervisory employee, as described in proposed § 76.3(b), would have to be present at a food establishment for every shift of that food establishment.

**Response:** A food establishment’s certified supervisory employee need *not* be present at a food establishment for every shift.

**Comment:** IRRC suggested proposed §§ 76.3(c) and (d) be revised by replacing the phrase “shall bring itself into compliance” with “shall comply.”

**Response:** The Department accepts this suggestion, and has implemented it in the final-form regulation.

**Comment:** IRRC noted that proposed § 76.3(c) would require a new food establishment to comply with the Act within “90 days”, while proposed § 76.3(d) would require an existing food establishment that loses its certified supervisory employee (through employee turnover or other circumstances) to comply with the Act within “3 months” of the loss. IRRC suggested the Department use one term consistently – either “3 months” or “90 days.” ACHD offered a similar comment.

**Response:** The “3 month” period referenced in § 76.3(d) is prescribed by the Act, at 3 Pa.C.S. § 6504(d). The “90 day” period referenced in § 76.3(c) derives from the provision in the Act at 3 Pa.C.S. § 6503(d), which affords a supervisory employee that period from his or her date of employment within which to pass the required certification test. The Department believes it reasonable to use this same 90-day time period in calculating the time within which a new food establishment must bring itself into compliance. For this reason the Department declines to implement the suggested revision in the final-form regulation.

**Comment:** IRRC recommended proposed § 76.3(e) be rewritten for greater clarity, and offered recommended language in this regard.

**Response:** The Department agrees that IRRC’s recommended language is more clear and straightforward than that of proposed § 76.3(e), and has revised § 76.3(e) of the final-form regulation to adopt IRRC’s suggested language.

**Comment:** Proposed §§ 76.3(e)(2) and (6) would require a food establishment to retain certain records for one year. IRRRC offered the observation that this one-year record retention period was not necessary, and recommended the Department consider establishing a shorter record retention period in the final-form regulation.

**Response:** The Department accepts this recommendation, and has revised § 76.3 of the final-form regulation to establish a 4-month record retention period.

**Comment:** Giant Foods and PFMA noted that proposed § 76.3(e) requires specific records be maintained at the food establishment site, and suggested the final-form regulation be revised to afford food establishments the option to retain these records at the food establishment's corporate office. PFMA also suggested that this revision would make record keeping and retrieval easier for both food establishments and the Department.

**Response:** The Department declines to implement this recommendation. A Department employee who conducts an inspection of a food establishment should be able to determine with certainty, during the course of that inspection, whether the food establishment is in compliance with the Act and its attendant regulations. This would not be possible if necessary paperwork is retained at some distant corporate office and is not immediately available at the time of inspection. The Department believes that the record-keeping requirements in § 76.3(e) are not unduly burdensome, and represent the minimum information the Department needs in order to check compliance with the Act and its attendant regulations.

**Comment:** Proposed § 76.3(f) requires that records be available during "reasonable hours." IRRRC suggests changing the phrase to "normal business hours of the food establishment." IRRRC believes that this phrase will clarify when records are expected to be made available.

**Response:** The Department accepts this recommendation, and has implemented it in the final-form regulation.

**Comment:** Giant Foods and PFMA offered the comment that proposed § 76.3(g) - which requires posting of the original certificate of a food establishment's certified supervisory employee in public view in the food establishment - should be revised to specify the exact location where the certificate should be posted. PFMA suggested this location be "in the entranceway, in the customer service area, or at the cash register for establishments having no customer area."

**Response:** The Department is reluctant to implement this suggestion, given the variety of layouts of food establishments. The Department believes the general requirement the certificate be posted "in public view" is adequate. A food establishment meets this posting requirement as long as the certificate is visible and readable from some location in the establishment that is accessible to the public.

The Department revised § 76.3(h) to reflect that a food establishment should return a certificate to the person to whom it is issued upon termination of employment or when the employee is no longer a certified supervisory employee with respect to that food establishment.



**Comment:** Proposed § 76.4 (relating to eligibility to apply for certification) would require a person to have received a score of at least 70% on an approved certification examination in order to be eligible to apply to the Department for certification. Several commentators questioned this 70% standard, and recommended alternative approaches to determining eligibility. PRA suggested the final-form regulation recognize examinations developed to various national standards. CCHD took the position that any specified passing score is too restrictive. It noted that some courses only give “pass/fail” results. CCHD also recommended the final-form regulation reflect that any examination must meet “current psychometric standards.” IRRC considered these comments, reviewed the proposed 70% standard and the requirement that an examination consist of at least 80 questions (prescribed in § 76.8 (relating to format of a certification examination)), and recommended the Department consider whether these standards and requirements might exclude some courses that would otherwise qualify. ACHD indicated that there is a current food safety training course which administers a test that has only 60 questions.

**Response:** The Department firmly believes that a supervisory employee should demonstrate a mastery of the subject matter of an approved certification examination in order to be eligible for certification, and that the 70% standard is a reasonable demonstrator of the test-taker’s mastery of that subject matter. The public has a basic understanding that a person who scores less than 70% on an examination has not mastered the subject matter addressed in that test. The Department did not set out to establish lowest-common-denominator standards that could be met by every food safety program. If the Department’s 70% standard – or any other requisite for the Department’s approval of a certification training program - works to exclude some food safety courses from being approved, the Department views this as acceptable.

One of the most widely-used food safety training programs is the “ServSafe” program developed by the Education Foundation of the National Restaurant Association. Under that program, the minimum passing score is 75% and the certification examination consists of at least 80 multiple-choice questions.

If there is a food safety course that awards its students a “pass/fail” grade, this would not, *per se*, prevent the Department from approving the course. If the “pass/fail” determination is based upon a test which meets the criteria of the final-form regulation and the test scores can be conveyed to the Department, the course may be approved. If a person “passes” such a course with an examination score of less than 70%, though, the Department would not certify that person.

The Department does not consider the 80-question minimum requirement for an approved certification examination to be unreasonable, particularly in light of the volume of required subjects set forth in § 76.7 of the final-form regulation (relating to certification training programs: food safety protection and training standards).

**Comment:** CCDH expressed concern that proposed § 76.4 requires *any* person seeking certification from the Department to first “complete an approved certification program”. CCDH would prefer there be some mechanism by which persons experienced in food safety procedures could be grandfathered-in for certification, rather than requiring these persons to attend a course of instruction in an area with respect to which they are already familiar. CCDH recommended there be a challenge test (a test without the pre-

test training) or some other approach that would spare food safety experts the time and expense of attending certification training programs.

**Response:** The Department declines to implement this recommendation. The Act (at 3 Pa.C.S. § 6503(d)) requires certification be granted “following the completion of industry-specific training programs recommended by the advisory board and approved by the department.” In addition, the training and continuing education requirements set forth in the final-form regulation will help keep a certified supervisory employee’s food safety knowledge current. The Department also notes that the Act and the final-form regulation afford a person until July 1, 2001 within which to obtain the required training and certification.

**Comment:** IRRC noted that proposed § 76.5 (relating to certification training programs: obtaining the department’s approval) would provide guidelines for approval of certification training programs, but would not prescribe minimum hours of instruction. IRRC suggested that a minimum hour requirement is a core element of a certification training program, and recommended the Department prescribe the specific minimum hours of instruction that will be required. Similarly, PFMA and CCHD requested the Department revise § 76.7 of the final-form regulation (relating to certification training programs: food safety and protection training standards) to specify the total number of training hours necessary for a program to become an approved certification training program.

**Response:** The Department agrees with IRRC and all the other commentators in this regard, and has revised § 76.7 of the final-form regulation to prescribe a minimum of 15 hours of instruction in an approved certification training program. This 15-hour minimum instruction requirement is further explained in § 76.7(a)(1)-(7) of the final-form regulation, which divides this 15-hour period among seven basic course topics.

**Comment:** ACHD suggested that proposed § 76.5(a) is too strict if it would require the Department’s approval of any and all changes to previously-approved certification training programs.

**Response:** The Department agrees with the commentator, and has revised § 76.5(a) in the final-form regulation to reflect that it is not necessary for the Department to approve non-substantive changes to a previously-approved certification training program. As a means of monitoring whether the program changes are, in fact, non-substantive, the Department had also added language to require these changes be reported to the Department.

**Comment:** PRA, ACHD and ECHD asked whether a single certification training program could be approved with respect to all 5 of the industry-specific categories of food establishment listed in § 76.3(a)(1)-(5) of the final-form regulation. As an example, PRA referenced its “ServSafe” certification training program and noted it had been approved in other states as acceptable training for food service employees in “restaurants, congregate feeding sites, contract feeders, institutional feeding, grocery stores, convenience stores, etc...”

**Response:** The answer to this question is “yes.” A certification training program’s content might be adequate to address any combination of the 5 industry-

specific categories of food establishment. In response to this comment, the Department has revised § 76.5(b) of the final-form regulation to reflect the possibility that a single approved certification training program might cover multiple industry-specific categories of food establishments.

**Comment:** ECHD expressed concern that proposed § 76.5 does not prescribe any minimum training, experience or educational requirements for those persons who will *teach* approved certification training programs. CCHD took the opposite view, and stated that it was not necessary, in proposed § 76.5(d), to describe the contents of a complete application.

**Response:** The Department is satisfied that the information and materials required under the application process described in § 76(d)(1)-(9) of the final-form regulation will provide the Department and the Advisory Board adequate information as to whether a certification training program should be approved. For this reason the Department has not made any revision to the final-form regulation in response to these comments.

**Comment:** Proposed § 76.5(d)(4) would require an application for certification training program approval to contain a copy of any examination to be administered as part of the program, plus the answer key. IRRC and PRA expressed apprehension that this proprietary product might be distributed beyond the Department or the Advisory Board. IRRC also expressed apprehension that examinations might find their way to prospective examinees.

**Response:** The Department will consider exams and answer keys submitted to it under § 76.5(d)(4) of the final-form regulation confidential and the proprietary documents of the entity submitting them, and will make no further distribution beyond the Department and the Advisory Board. Advisory Board members will also be apprised that these documents are to be considered proprietary information. In response to the comment, the Department has revised § 76.5(g) of the final-form regulation to clarify that certain materials it receives in the application process will be considered confidential and proprietary. The Department has also made a similar revision to § 76.13(d) of the final-form regulation (relating to obtaining departmental approval of a continuing education course).

**Comment:** This comment is similar to the preceding comment. Proposed § 76.5(d)(5) would require an application for certification training program approval to include a copy of “all teacher materials” for the program. Giant Foods expressed concern over this provision, and suggested the final-form regulation be revised to afford an applicant the option to submit a “listing” of teacher materials instead of the materials, themselves.

**Response:** The Department believes it is important to review the teacher materials for any certification program with respect to which approval is sought, and declines to implement the suggested revision in the final-form regulation. To the extent the commentator’s concerns may be driven by a desire to protect proprietary information or otherwise keep their work product from being used by other entities, the Department will consider teacher materials confidential and the proprietary information of the entity

submitting them, and will make no further distribution beyond the Department and the Advisory Board. Advisory Board members will also be apprised that teacher materials are to be considered proprietary information. As stated in the preceding response, the Department has revised §§ 76.5(g) and 76.13(d) of the final-form regulation to clarify that certain materials it receives in the application process will be considered confidential and proprietary.

**Comment:** ECDH asked if – in the context of reviewing an application for approval of a home study certification training program – the materials the applicant would be required to submit under proposed § 76.5(d)(6) would be the course materials the home study course proposes to forward to its students.

**Response:** The answer to this question is “yes.”

**Comment:** ECDH reviewed proposed § 76.5(f) and asked whether an approved certification training program must be re-approved at least 90 days before it is conducted. ECDH also suggested requiring course re-approval only if changes are made to the curriculum.

**Response:** Once a certification program is approved, it need not be re-approved each time it is offered. For example, if a certification program is approved in 1999 and is offered to students in 1999, it need not be re-approved if it is offered again in 2000. The 90-day deadline in § 76.5(f) of the final-form regulation provides the Department and the Advisory Board a reasonable period following receipt of a complete application within which to evaluate the application and communicate a decision on the application to the applicant, and affords the applicant a reasonable prospect that – barring complications with the application – the program could be approved in advance of the planned date on which the applicant wishes to conduct the program for the first time.

**Comment:** Giant Foods suggested the 90-day deadline set forth in proposed § 76.5(f) be reduced to 45 days.

**Response:** The Department declines to implement the suggested revision in the final-form regulation. The Department believes the 90-day period set forth in § 76.5(f) of the final-form regulation is necessary, in order to afford adequate time to schedule and convene a meeting of the Advisory Board to consider the application. This deadline also serves to decrease the number of times the Advisory board must meet each year.

**Comment:** Giant Foods requested the Department define the phrase “a majority of the Advisory Board” in proposed § 76.5(g).

**Response:** The Department has language to § 76.18(d) of the final-form regulation (relating to advisory board) to reflect that a quorum of that body is a simple majority of its members, and a simple majority of a quorum is necessary for approval of any motion before that body.

**Comment:** ACDH suggested that the audit permitted under 76.6 (relating to certification training programs: audit by department) should also address “control of the tests, proctoring, cheating, teaching to the test, etc...”

**Response:** The Department believes that the broad language of § 76.6 of the final-form regulation provides the Department adequate authority to monitor approved certification training programs. The Department is reluctant to attempt to list *all* of the factors it might consider in the course of its audit of such a program, since it would be difficult to make such a listing all-inclusive.

**Comment:** The House Committee reviewed proposed § 76.7 (relating to certification training programs: food safety protection and training standards), and noted that the section did not make reference to the “industry-specific training programs” prescribed by the Act (at 3 Pa.C.S. § 6503(d)). The House Committee noted appropriate references to industry-specific categories of food establishments throughout the proposed regulation, and questioned the absence of this subject in proposed § 76.7 – the section prescribing appropriate food safety protection and training standards.

**Response:** The Department agrees that § 76.7 of the final-form regulation should contain language requiring a more precise link between the subject matter of a certification program and the industry-specific category of food establishment with respect to which certification program approval is sought. In response to this comment § 76.7 of the final-form regulation has been revised to make repeated references to the requirement that instruction in a training program be relevant to the industry-specific category of food establishment addressed in the certification training program.

**Comment:** The House Committee took note of the use of the term “training program” in proposed § 76.7(a), and asked whether it is the same thing as a “certification program” and whether the term “certification training program” would be more accurate.

**Response:** The Department agrees that the term “certification training program” is the most descriptive term for the programs described in the final-form regulation, and has revised the final-form regulation throughout to make consistent use of this term.

**Comment:** CCHD offered the general comment that the material set forth in proposed §§ 76.7(b)-(h) was too detailed, and would not allow for new food safety information to be added to certification training programs.

**Response:** The referenced sections do not prevent future certification training programs from addressing advancements in food safety science and procedures.

**Comment:** HRC suggested proposed § 76.7 require a certification training program to address Hepatitis A vaccine, the availability of this vaccine and the availability of other vaccinations that relate to foodborne disease as they become available.

**Response:** Section 76.7(d)(1)(iii) of the final-form regulation requires a certification training program address “Hepatitis A infection.” If experience demonstrates more emphasis should be placed on the topics described by the commentator, the Department will revisit the regulation.

**Comment:** IRRC suggested the Department delete the phrase “or Hazardous Analysis Critical Control Point” from § 76.7(e)(1)(v) of the final-form regulation, since “HACCP” is defined in § 76.2.

**Response:** IRRC's suggestion has been implemented in the final-form regulation.

**Comment:** IRRC noted the use of the acronym "MSDS" in proposed § 76.7(f)(2), and suggested the acronym be spelled-out and defined in § 76.2 of the final-form regulation.

**Response:** IRRC's suggestion has been implemented in the final-form regulation.

**Comment:** Proposed §§ 76.7(g)(6) and (7) would require that a portion of training address facilities and equipment layout and, in particular, plumbing and management of solid and liquid waste. ECHD asked whether these paragraphs cover the information that should be given regarding sewage disposal.

**Response:** The Department believes the phrase plumbing design and "management of solid and liquid waste" in §§ 76.7(g)(6) and (7) of the final-form regulation fairly include sewage disposal.

**Comment:** ACHD notes that all of the food certification program training areas should be in compliance with the recommendations set forth at the 1996 Food Protection Conference.

**Response:** The Department's main reference in developing the final-form regulation has been the recently-issued 1999 FDA Food Code, rather than the 1996 Food Protection Conference.

**Comment:** Proposed § 76.8 (relating to format of a certification examination) would restrict food certification examinations to multiple choice or true or false formats. Both IRRC and PRA offered the opinion that there is no need to restrict the test format because there are other testing formats available. ACHD also questioned the Department's acceptance of true-or-false questions, since someone with no food safety knowledge could answer half of these questions correctly.

**Response:** The Department agrees with the commentators and has revised § 76.8 of the final-form regulation to delete any requirement the examination be in a multiple choice or true-or-false format. The Department will not prohibit the use of true-or-false questions, but understands that the typical examination uses a multiple-choice format. If subsequent experience demonstrates a need to prohibit true-or-false examinations altogether, the Department will revisit this regulation.

**Comment:** IRRC recommended the Department revise § 76.9 of the final-form regulation (relating to reporting results of certification examination) to specify whether the 20-day time period referenced in that section pertains to "business days" or "calendar day." PRA recommended that this period refer to "business days." HRC recommended this period be lengthened to 45 days.

**Response:** The Department has revised this section to clarify that the referenced period refers to *calendar* days. This will be an easier standard to enforce. In recognition of the concern raised by PRA and HRC, though, the 20-day period has been changed to a 30-calendar-day period in the final-form regulation.

**Comment:** Radnor Township asked who would be responsible to grade certification examinations (which are referenced at proposed § 76.9).

**Response:** The person who reports the examination score to the Department pursuant to § 76.9 of the final-form regulation is ultimately responsible for the accuracy of the scoring of the examination, and is free to delegate examination scoring responsibilities.

**Comment:** Proposed § 76.10 (relating to applying for certification) would require a person to apply to the Department for certification. Both PFMA and Giant Foods suggested requiring either that person “or a corporate representative of that individual” apply to the Department for certification. Giant and PFMA believe that a corporate office may be able to process a supervisory employee’s application for certification more quickly than the supervisory employee.

**Response:** The Department believes the language of § 76.10 of the final-form regulation would allow the process the commentators describe. If, for example, Giant Foods arranges for a supervisory employee to attend and complete a certification training program, it may obtain and submit a certification application on its employee’s behalf. If certification is granted, though, the certificate will be issued to the certified supervisory employee, rather than Giant Foods.

**Comment:** In the context of its review of proposed § 76.10, CCHD requested clarification of whether a person who conducts a certification training program or proctors a certification examination could distribute application for certification forms to persons taking the training. Similarly, Giant Foods asked whether a corporation could obtain application forms for its supervisory employees.

**Response:** The Department will provide application forms to any person who requests them – regardless of whether they are requested by a prospective applicant, a prospective applicant’s employer, the person conducting the certification training program attended by the prospective applicant, or any other person. Section 76.10(b) of the final-form regulation has been revised to clarify that anyone may obtain a certification application form from the Department. An instructor or examination proctor is free to obtain and distribute these forms.

**Comment:** ECHD reviewed proposed § 76.10(b)(2), which requires an applicant for certification to submit the date and location of the approved certification training program as part of the application, and questioned whether this information would be adequate to constitute “official proof” that the applicant had completed required training.

**Response:** The Department will verify whether an applicant has successfully completed required training by referring to the confirmation required of the person who proctors the certification examination. Section 76.9 of the final-form regulation requires such a proctor to provide the Department a copy of the examination score, the date and location of the examination and the industry-specific category of food establishment(s) addressed in the certification training course. The Department will use this information to cross-check the representations a person makes on an application for certification.

**Comment:** IRRC and PFMA suggested proposed § 76.11 (relating to certificate) be revised to allow for the replacement of lost, stolen or damaged certificates.

**Response:** The Department accepts this comment, and has added § 76.11(d) to the final-form regulation to establish a procedure for replacing lost, stolen or damaged certificates.

**Comment:** HRC commented that the certificate described in proposed § 76.11 should be valid for the industry-wide average of 2 years – rather than 5 years.

**Response:** The 5-year effective life of a certificate, as set forth in § 76.11(a)(4) of the final-form regulation, is prescribed by the Act, at 3 Pa.C.S. § 6504(f), and cannot be altered by regulation.

**Comment:** ACHD and ECHD reviewed proposed § 76.12 (relating to renewal of certification) and suggested that the final-form regulation should require that a certificateholder take a written examination every 5 years to ensure that continuing education efforts have been successful.

**Response:** Although the Department agrees that periodic retesting of certificateholders might work to benefit the long-term credibility and effectiveness of food safety promotion efforts, it is constrained to follow the provisions of the Act which provide, at 3 Pa.C.S. § 6504(f), that although continuing education courses are required, the “courses shall not include a written examination.”

**Comment:** Giant Foods requested the 7.5-hour course requirement for continuing education courses, set forth in proposed § 76.12(a) (relating to renewal of certification), be reduced to 4 hours.

**Response:** The Department believes the 7.5 hour minimum requirement set forth in § 76.12(a) of the final-form regulation is a reasonable minimum standard for a continuing education course, and for this reason declines to implement the requested revision.

**Comment:** Giant Foods and PFMA requested that proposed §§ 76.12(a), (b) and (c) be revised to allow a “corporate representative” to renew a certified supervisory employee’s certification.

**Response:** As is the case with initial applications for certification (§ 76.10), the Department will provide application for renewal of certification forms to any person who requests them – regardless of whether they are requested by a prospective applicant, a prospective applicant’s employer, or any other person. Section 76.12(b) of the final-form regulation has been revised to clarify that anyone may obtain an application for renewal of certification form from the Department. This revision is similar to a revision appearing in § 76.10(b) of the final-form regulation.

**Comment:** CCHD noted that proposed § 76.13(c)(2) (relating to obtaining departmental approval of a continuing education course) would require such a course to address “changes, updates or advances” in food safety. The commentator makes the point that – after 5 years from initial certification – a certificateholder would benefit from



a general review of the material that was presented in the initial certification training course.

**Response:** The Commentator's point is well taken. The Department has revised § 76.13(c)(2) of the final-form regulation to allow a continuing education course to consist of a general review of food safety considerations and procedures.

**Comment:** CCHD offered the observation that proposed § 76.13 would not prescribe curriculum guidelines for continuing education courses, and requested the Department consider adding such curriculum guidelines in the final-form regulation.

**Response:** The Department is satisfied with the general continuing education course subject matter parameters set forth in § 76.13(c) of the final-form regulation, and intends to allow a measure of flexibility and innovation within these parameters. Should subsequent experience reveal a need to establish more specific requirements, the Department will revisit this regulation.

**Comment:** PRA presented a factual situation which drives its suggestion that proposed § 76.14 (relating to reciprocity with other states) be revised. Under that section, the Department would accept certification issued by another state *if* the other state has a similar food employee certification program and that state and the Department have a reciprocal agreement in this regard.

PRA presented the following scenario: A restaurant chain has multiple units in many states, and trains its managers at a central training facility outside the Commonwealth using the "ServSafe" training program of the Educational Foundation of the National Restaurant Association. If the state at which the training facility is located does not, itself, have both a food employee certification program and a reciprocity agreement with the Department, then the proposed language of § 76.14 "would prohibit those managers from going to work in Pennsylvania and having their certification be accepted in Pennsylvania because the residual training state did not require certification."

**Response:** The basic requirements of § 76.14 of the final-form regulation are prescribed by the Act, at 3 Pa.C.S. § 6506.

In addition, the Department believes the commentator might be confusing "reciprocity" with eligibility to apply for certification in the Commonwealth. Under the factual situation the commentator relates, a manager who successfully completes the "ServSafe" program out-of-state is free to apply for certification in the Commonwealth, as long as the "ServSafe" program is an approved certification training program. The fact that the state in which the training occurs does not have reciprocity with the Commonwealth under § 76.14 of the final-form regulation does not limit or prohibit a person who has successfully completed an approved certification training program in another state from applying for certification under the Act. For the above reasons, the Department has not implemented the commentator's suggested revision.

**Comment:** CCHD offered the general comment that proposed §§ 76.14 should be combined with proposed § 76.17 (relating to preemption and local governmental authority).

**Response:** The Department declines to combine these 2 sections. The Act treats the subject matter of these 2 sections separately, as well. Preemption is addressed in the Act at 3 Pa.C.S. § 6503(c). Reciprocity is addressed in the Act at 3 Pa.C.S. § 6506.

**Comment:** IRRC and PRA suggested proposed § 76.15 (relating to suspension or revocation of certification) be revised to address the procedure by which revoked or suspended certificates would be reinstated.

**Response:** The Department accepts this suggestion, and has implemented it by adding § 76.15(d) to the final-form regulation. That new subsection provides for automatic reinstatement of a *suspended* certificate if the suspension period ends before the expiration date printed on the certificate. If the expiration date for the certificate occurs during the period of suspension, though, the affected person must reapply for certification after the suspension period. If a certificate is *revoked*, the revoked certificate will not be reinstated and the affected person must reapply for certification at the end of the revocation period.

**Comment:** Giant Foods noted that proposed § 76.15(a) would provide that “the Department may suspend or revoke the certification of a certificateholder if that person does one or more of the following...”, and suggested this provision be revised to only allow revocation or suspension where a certificateholder “repeatedly” performs one or more of the violations described at proposed §§ 76.15(a)(1)-(4).

**Response:** The Department declines to implement this suggestion in the final-form regulation. As written, § 76.15 affords the Department a measure of discretion in deciding whether to suspend or revoke certification. The provision reads that the Department “may” suspend or revoke certification under some circumstances. The Department believes there are food safety violations that might justify suspension or revocation of a certificate the first time they occur, and believes it must preserve the option to take action against a certificateholder when such a violation occurs.

**Comment:** The House Committee suggested that proposed § 76.17 (relating to preemption and local governmental authority) be reworded to explain more fully the complimentary relationship between State and local authorities, and characterized this relationship as essential to the success of food employee certification efforts Statewide.

**Response:** The Department believes § 76.17 of the final-form regulation addresses the full extent of the interplay between the Department and local food employee certification programs that predate September 1, 1994. These local food employee certification programs are free to operate within the boundaries of their respective local government units. A local government unit with its own pre-September 1, 1994 food employee certification program may make reciprocal agreements with other such local government units. If a local government unit with its own pre-September 1, 1994 food employee certification program wants its certified food employees to be accepted Commonwealth-wide, though, that program’s training certification program would have to be approved by the Department and the Advisory Board in accordance with the Act and the regulation.

**Comment:** ACHD expressed the opinion that a food certification program offered by local health units should be accepted Statewide if the course is comparable to those approved by the Department and the Advisory Board in accordance with the Act. The commentator also recommended proposed § 76.17 be revised to allow for reciprocal agreements between local health units and the Department.

**Response:** The Department declines to implement this recommendation. The Act (at 3 Pa.C.S. §§ 6503(e) and (f)) carves-out a rather narrow exemption for certain local food employee certification programs established prior to September 1, 1994. The Department believes that the local food employee certification training program standards of an exempt county, city, borough, incorporated town or township should not be accepted outside that local government unit *unless* the local government unit applies to the Department and receives approval of its certification training program in accordance with the Act and the regulation. If this occurs, a person who successfully completes the Department-approved certification training program (and meets the other requirements of the Act and the regulation) can apply to the Department for a certificate.

**Comment:** CCHD commented that proposed § 76.17(d) was confusing and repetitive, and should be deleted.

**Response:** The Department disagrees, and has retained the referenced provision in the final-form regulation. The referenced subsection attempts to clarify the responsibilities of local government units that retain exclusive responsibility for food employee certification within their jurisdictions.

**Comment:** CCHD reviewed proposed § 76.18 (relating to advisory board) and suggested that the composition of the Advisory Board establishes an imbalance between “industry-political interests” and “public health interests” – in favor of the former. ECHD and Radnor Township offered similar comments. HRC proposed adding at least 7 positions to the Advisory Board: 3 persons with adult education/food manager training, 2 persons with medical backgrounds and 2 persons with public health backgrounds. Representative Wright proposed that at least 6 Advisory board members have medical backgrounds and that at one of these 6 should be associated with Pennsylvania State University,

**Response:** Section 76.18 of the final-form regulation restates the Advisory Board composition prescribed by the Act, at 3 Pa.C.S. § 6503. The Department notes, though, that the referenced section of the Act allows for “*at least one person*” from the large list of food service, governmental and public health organizations at 3 Pa.C.S. § 6503(a)(5) to be members of the Advisory Board. Section 76.18(b)(8) of the final-form regulation restates this, and allows for *at least one* representative from each of the groups listed at § 76.18(b)(8)(i)-(xiii). The Department will consider all of the comments received on this subject as it assembles the Advisory Board. Should the Department perceive a need to have more than one Advisory Board member from any of these designated interests, it may do so.

**Comment:** IRRRC and the CCHD noted that the proposed regulation does not impart any authority or obligation upon a certified supervisory employee to implement food safety measures or otherwise implement his or her food safety training in the food

establishment at which the certified supervisory employee is employed. IRRC expressed concern that the certified supervisory employee will not be effective in protecting the public health if the employee is powerless to implement food safety measures, and recommended the Department clarify the extent of the certified supervisory employee's responsibilities and authority. The House Committee offered a similar comment, and asked for clarification of the extent to which the regulation requires certified supervisory employees to implement their food safety training in the workplace. The House Committee raised its question in the context of its consideration of proposed § 76.19 (relating to civil penalties).

The House Committee also noted that proposed § 76.19 would allow for the imposition of a civil penalty upon any "person or food establishment" that violates the Act or a regulation, and asked for clarification of the circumstances under which a civil penalty might be imposed.

**Response:** Although the Act requires most food establishments in the Commonwealth to have at least one certified supervisory employee by July 1, 2001, it does not require that these certified supervisory employees make any specific use of their food safety training in the workplace. Food establishments are regularly inspected by the Department and/or local authorities, and can be prosecuted for food safety and sanitation violations. In addition, sanitation problems can cost a food establishment business. A food establishment with a certified supervisory employee, trained in food safety and sanitation in accordance with the Act, has a built-in interest in availing itself of the food safety and sanitation knowledge of that certified supervisory employee. Against this backdrop the Department declines to revise the final-form regulation to impart upon certified supervisory employees duties or responsibilities that are not prescribed by the Act.

Section 76.19 of the final-form regulation allows for the imposition of civil penalties, but this remedy is *in addition to* any other remedy available at law (in accordance with the Act, at 3 Pa.C.S. § 6508). As stated, the Department inspects food establishments and has statutory authority under which to prosecute persons for violations of food safety and sanitation standards. The Department does not expect civil penalty provisions to be a frequent occurrence, since the Department can – in most cases – proceed with a criminal prosecution at less cost. It is likely a civil penalty would be more commonly sought with respect to technical violations of the procedures or requirements of the regulation, rather than violations that more directly affect public health and safety.

**Comment:** IRRC offered the general recommendation that the Department revise the final-form regulation by deleting the phrase "other information the Department might reasonably require", as it appears in proposed §§ 76.5(d)(9), 76.11(a)(7), 76.12(b)(5) and 76.13(c)(6). In each instance the phrase is used to afford the Department some discretion to require additional information necessary to a decision.

**Response:** Although the Department declines to implement this recommendation, it has revised the referenced paragraphs in the final-form regulation to fine-tune the purpose for which additional information might be required. The Department has made similar revisions in the most recent regulation it promulgated – the regulations required under the Consolidated Weights and Measures Act (70 Pa. Code). The Department

believes it important to retain a measure of flexibility and discretion, but agrees that the “other information” language should be narrowed as it has been in the final-form regulation.

### ***Fiscal Impact***

#### ***Commonwealth***

The final-form regulation will not impose any costs on the Commonwealth or have any fiscal impact upon the Commonwealth beyond those costs and fiscal impacts imposed by the Act itself. The Act requires the Department devote employee time to the review of proposed training programs, the keeping of required records and other functions. Although the Department will inspect food establishments for compliance, employees of the Department are already charged with the responsibility to inspect and license food establishments. The addition of the inspection responsibilities imposed by the Act will not appreciably increase the Department’s costs.

#### ***Political Subdivisions***

The final-form regulation will impose no costs and have no fiscal impact upon political subdivisions.

#### ***Private Sector***

The final-form regulation will not impose costs or other adverse fiscal consequences beyond those imposed by the Act itself. In accordance with the Act, most food establishments in the Commonwealth will have to ensure that they employ at least one certified supervisory employee. Although the food establishment might impose the cost of necessary training on the supervisory employee, it is more likely the food establishment, itself, would absorb these costs.

#### ***General Public***

The final-form regulation will impose no costs and have no fiscal impact upon the general public. Although food establishments might incur some costs in obtaining certification for a supervisory employee, these costs are expected to be modest. In view of this expectation, and the fact that certification is valid for 5 years at a time, it is not likely any costs imposed by the Act will measurably impact upon consumers.

### ***Paperwork Requirements***

The Act requires that the Department issue certificates to supervisory employees who successfully complete an approved certification training program and pass an approved examination. It also requires the Department monitor compliance and enforce its provisions. This will certainly result in an increase in paperwork. The final-form regulation, though, does not impose paperwork requirements beyond those imposed by the Act itself.

### ***Contact Person***

Further information is available by contacting the Department of Agriculture, Bureau of Food Safety and Laboratory Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Martha M. Melton.

### ***Regulatory Review***

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a), the Department submitted a copy of the Notice of Proposed Rulemaking published at 27 *Pennsylvania Bulletin* 2936 (June 21, 1997) on June 11, 1997 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with § 5(b.1), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing this final-form regulation, the Department has considered all comments received from the Commission, the Committees and the public.

This final-form regulation was (deemed) approved by the House Agricultural and Rural Affairs Committee on \_\_\_\_\_, was (deemed) approved by the Senate Agriculture and Rural Affairs Committee on \_\_\_\_\_, and was (deemed) approved by the Commission on \_\_\_\_\_.

### ***Findings***

The Department of Agriculture finds the following:

- (1) Public notice of its intention to adopt the regulation encompassed by this Order has been given under §§ 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments received were considered.
- (3) The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 27 *Pennsylvania Bulletin* 2936 (June 21, 1997).
- (4) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

### ***Order***

The Department of Agriculture, acting under authority of the authorizing statute, orders the following:

- (1) The new regulations of the Department of Agriculture at 70 Pa. Code Chapter 76 (relating to food employee certification), including §§ 76.1 (relating to compliance), 76.2 (relating to definitions), 76.3 (relating to requirements for

food establishments), 76.4 (relating to eligibility to apply for certification), 76.5 (relating to certification training programs: obtaining the department's approval), 76.6 (relating to certification training programs: audit by department), 76.7 (relating to certification training programs: food safety protection and training standards), 76.8 (relating to format of a certification examination), 76.9 (relating to reporting results of a certification examination), 76.10 (relating to applying for certification), 76.11 (relating to certificate), 76.12 (relating to renewal of certification), 76.13 (relating to obtaining departmental approval of a continuing education course), 76.14 (relating to reciprocity with other states), 76.15 (relating to suspension or revocation of certification), 76.16 (relating to contacting the department), 76.17 (relating to preemption and local governmental authority), 76.18 (relating to advisory board) and 76.19 (relating to civil penalties) are adopted as set forth at Annex "A" hereto.

- (2) The Secretary of Agriculture shall submit this Order, *27 Pennsylvania Bulletin* 2936 (June 21, 1997) and Annex "A" hereto shall be submitted to the Office of General Counsel and to the Office of Attorney General for approval as required by law.
- (3) The Secretary of Agriculture shall certify this Order, *27 Pennsylvania Bulletin* 2936 (June 21, 1997) and Annex "A" hereto and deposit them with the Legislative Reference Bureau as required by law.
- (4) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

BY THE DEPARTMENT OF AGRICULTURE

*Samuel E. Hayes, Jr., Secretary*

## ANNEX "A"

### Title 7. AGRICULTURE PART III. BUREAU OF FOOD SAFETY AND LABORATORY SERVICES CHAPTER 76. FOOD EMPLOYEE CERTIFICATION

Sec.

- 76.1. Compliance.
- 76.2. Definitions.
- 76.3. Requirements for food establishments.
- 76.4. Eligibility to apply for certification.
- 76.5. Certification TRAINING programs: obtaining the Department's approval.
- 76.6. Certification TRAINING programs: audit by Department.
- 76.7. Certification TRAINING programs: food safety protection and training standards.
- 76.8. Format of a certification examination.
- 76.9. Reporting results of a certification examination.
- 76.10. Applying for certification.
- 76.11. Certificate.
- 76.12. Renewal of certification.
- 76.13. Obtaining Departmental approval of a continuing education course.
- 76.14. Reciprocity with other states.
- 76.15. Suspension or revocation of certification.
- 76.16. Contacting the Department.
- 76.17. Preemption and local governmental authority.
- 76.18. Advisory Board.
- 76.19. Civil penalties.

#### § 76.1. Compliance.

(a) *Mandatory compliance.* On or after July 1, 2001, a food establishment shall comply with the Act and this chapter, unless it is exempt under subsection (d).

(b) *Interim compliance optional.* A food establishment need not comply with the Act or this chapter until July 1, 2001, but is encouraged to do so in advance of that date.

(c) *Benefit of interim compliance.* If a food establishment that voluntarily complies with the Act and this chapter is the subject of an action to recover fines or penalties for a violation of the Food Act, and the violation occurs prior to July 1, 2000, the voluntary compliance of the food establishment will be considered a mitigating factor in determining whether the food establishment shall be assessed more than the minimum fine or civil penalty required by law.

(d) *Exemption for certain types of food establishments.* The following food establishments are exempt from the requirements of the Act and this chapter:

- (1) A food establishment where only commercially prepackaged food is handled and sold.
- (2) A food establishment that does not handle potentially hazardous food.
- (3) A food establishment that is a food manufacturing facility engaged in the



manufacture of prepackaged foods and which does not manufacture potentially hazardous food.

## § 76.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless [the context clearly indicates otherwise or unless] otherwise defined in the MOST CURRENT FDA Food Code[, or a subsequent amendment thereof]:

*Act* - [3 Pa.C.S. Chapter 65 (relating to Food Employee Certification Advisory Board)] THE FOOD EMPLOYEE CERTIFICATION ACT (3 PA.C.S. §§ 6501-6510).

*Adulterated Food* - Food that is considered adulterated under section 8 of the Food Act (31 P.S. § 20.8).

*Adulteration* - An action that creates adulterated food.

*Advisory Board or Board* - The Food Employee Certification Advisory Board.

*Air dry* - The exposure of wet articles to air for the purpose of drying through evaporation.

*Air gap* - The vertical distance between the point where water enters a plumbing fixture - such as a sink - and the level at which the plumbing fixture would overflow.

*Asymptomatic* - Presenting no [evidence] SYMPTOMS of disease.

*Backflow device* - A device that prevents liquid from flowing back or moving toward the source from which the liquid was introduced.

*Bacteria* - Single cell microorganisms.

*Bacteria growth* - Multiplication of bacteria through cell division.

*Bakery* - A food establishment in which baked products (breads, rolls, cakes, doughnuts, biscuits, pies, macaroni, spaghetti, noodles, and the like) are manufactured for human consumption.

*Bleach* - Sodium hypochlorite, a chemical sanitizer.

*C.I.P. or cleaned in place* - Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. The term does not include the cleaning of equipment[, ] such as band saws, slicers or mixers that are subjected to in-place cleaning without the use of a CIP system.

*Certificate* - A document issued by the Department to a particular person to evidence that the named individual has demonstrated adequate food protection knowledge and is certified for purposes of [section 6503(d) of] the act (AT 3 PA.C.S. § 6503(d)) (relating to certification advisory board and programs) with respect to an industry-specific category of food establishment.

*Certificateholder* - A person holding a valid certificate[, regardless of whether that person is a supervisory employee].

*Certified supervisory employee* - A supervisory employee holding a valid certificate.

*Cleanability* - The property of being cleanable or accessible for cleaning.

*Cleaning* - The process by which dirt or other foreign matter is removed from an article.

*Communicable disease* - An infectious disease transmissible to persons or animals by direct or indirect means.

*Confirmed disease outbreak* - A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates food as the source of the illness.

*Contamination* - Soiling, staining, corrupting or infecting by contact or association.

*Critical control point* - A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

*Critical item* - An action which violates a food sanitation standard and which may contribute to food contamination, illness or environmental [degradation] HEALTH HAZARD.

*Cross-contamination* - The transfer of bacteria or other microorganisms from one source to another.

*Department* - The Department of Agriculture of the Commonwealth.

*Detergent* - A cleaning agent.

*Easily cleanable* -

(i) A characteristic of a surface that:

(A) Allows effective removal of soil by normal cleaning methods.

(B) Is dependent upon the material, design, construction and installation of the surface.

(C) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose and use.

(ii) The term includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in subparagraph (i) to different situations in which varying degrees of cleanability are required, such as one of the following:

(A) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining.

(B) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

*Escherichia coli or E. coli* - Gram-negative rod-shaped bacteria normally present in the intestines of man and animals, which may be pathogenic and are indicative of fecal contamination when found in food or water.

*FDA Food Code* - A publication [issued by the United States Food and Drug Administration which is available from the Department] OF RECOMMENDATIONS BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION (FDA) FOR SAFEGUARDING PUBLIC HEALTH AND ENSURING SAFE FOOD.

*Food* - A raw, cooked or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum. THE TERM DOES NOT INCLUDE MEDICINES AND DRUGS.

*Food Act* - The Food Act (31 P.S. §§ 20.1 - 20.18).

*Food contact surface* - One of the following:

(i) A surface of equipment or a utensil with which food normally comes into contact.

(ii) A surface of equipment or a utensil from which food may drain, drip or splash into a food or onto a surface normally in contact with food.

*Food establishment* - A room, building, place or portion thereof or vehicle maintained, used or operated for the purpose of selling to the public, commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing, transporting or handling food. The term includes retail food stores and public eating and drinking licensees, except those portions of establishments operating exclusively under milk or milk products permits and those portions of establishments operating exclusively under United States Department of Agriculture inspection. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast, homestead or inn as defined in the Public Eating and Drinking Place Law.

*Food processor* - A food establishment that manufactures foods using methods such as cutting, grinding, chipping, peeling, baking, dicing, shredding, extrusion, drying, whipping, blanching, heating, extraction, smoking, freezing, fermenting, mixing or dehydrating, or that packages, cans, jars or otherwise places food in containers.

*Food service* - A food establishment that prepares [and] FOOD FOR THE CONSUMER, OR serves foods to the consumer, OR BOTH. This category of food establishment includes restaurants, hotels, auction house stands, hot dog vendors, flea market stands, nursing home kitchens, school cafeterias, college/university cafeterias, roadside stands, hand-dipped ice cream and yogurt sellers, college snack bars, stands at fairs and carnivals, caterers, snow-cone stands, camp kitchens, church kitchens, private clubs and associations, and food vendors at stadiums, racetracks, parks and public charity events.

*Foodborne disease outbreak* -

[(i) An incident, except as specified in subparagraph

(ii), in which:

(A) Two or more persons experience a similar illness after ingestion of a common food.

(B) Epidemiological analysis implicates the food as the source of the illness.

(ii) The term includes a single case of illness such as one person ill from botulism or chemical poisoning.] THE OCCURRENCE OF TWO OR MORE CASES OF A SIMILAR ILLNESS RESULTING FROM INGESTION OF A COMMON FOOD.

*Frozen dessert manufacturer* - A food establishment that is located in the Commonwealth and that is required to be licensed under authority of the Frozen Dessert Law (31 P.S. §§ 417-1 - 417.14).

*Fungi* - A division of lower plant life WHICH INCLUDES YEASTS, MOLDS, MILDEW, AND MUSHROOMS.

*H.A.C.C.P. - Hazard Analysis Critical Control Point* - A system that identifies and monitors specific foodborne hazards (biological, chemical or physical properties) that can adversely affect the safety of the food product.

*Handwash sink* - A sink specifically designated for hand washing.

*Hazard* - A biological, chemical, or physical property that may cause an unacceptable consumer health risk.

*Hepatitis A infection* - A viral foodborne illness that can be transmitted from an infected person, through food, to another person.

*Hermetically sealed container* - A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

*Highly susceptible population* - A group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

*Infection* - A disease or condition due to the growth of microorganisms in a host.

*Intoxication* - Illness caused by ingestion of food containing a bacterial toxin.

*Lag phase* - The time period needed for bacteria to acclimate to a new environment, during which bacterial growth is limited or nonexistent.

*Log phase* - The time period which follows the lag phase and during which bacteria undergo accelerated growth.

**M.S.D.S. OR MATERIAL SAFETY DATA SHEET** - A DATA SHEET SUPPLIED BY MANUFACTURERS OF HAZARDOUS CHEMICALS WHICH GIVES PROPER LABELING OF THE PRODUCT, HAZARD WARNINGS AND THE NAME OF THE MANUFACTURER.

*Nonfood contact surface* - Exposed surfaces which do not, under normal use, come into contact with food.

*pH* - The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

*ppm* - Parts per million, or milligrams per liter (mg/l).

*Parasite* - A living organism which derives its nourishment from another living organism.

*Pathogenic organism* - A disease-producing organism.

*Person* - A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

*Plan review* - The process by which plans and specifications for the construction, remodeling or alteration of a food establishment are reviewed for conformance to specified standards.

*Poisonous or deleterious substance* - A substance that would be considered poisonous or deleterious under section 11 of the Food Act (31 P.S. § 20.11).

*Potable water* - [Water that is safe for human consumption] SAFE DRINKING WATER AS DEFINED IN THE PENNSYLVANIA SAFE DRINKING WATER ACT (35 P.S. §§ 721.1-721.17).

*Potentially hazardous food* - A food which consists in whole or in part of milk or milk products, eggs, meats, poultry, fish, shellfish, edible crustaceans or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does

not include foods that have a pH level of 4.6 or below or a water activity of 0.85 or less under standard conditions or food products in hermetically sealed containers processed to maintain commercial sterility.

*Product protection* - Safety measures used to prevent food contamination.

*Public eating and drinking place* - A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge, or a place which otherwise conforms to the definition in section 1 of the Public Eating and Drinking Place Law (35 P.S. § 655.1). The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

*Public Eating and Drinking Place Law* - The Act of May 23, 1945 (P.L. 926, No. 369)(35 P.S. §§ 655.1 - 655.13).

*Quaternary ammonium compound* - A chemical sanitizer which is a derivative of ammonium hydroxide or its salts.

*Ready-to-Eat Food* -

(i) Food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.

(ii) The term includes:

(A) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food [under the most current edition of the FDA Food Code].

(B) Raw, washed, cut fruits and vegetables.

(C) Whole, raw[,] fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet.

(D) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

*Reduced Oxygen Packaging* -

(i) The reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen.

(ii) The term includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen and vacuum packaging INCLUDING *SOUS VIDE*.

*Retail food store* - A food establishment or a section of a food establishment where food and food products are offered to the consumer and intended for off-premises consumption.

*Salmonella enteritidis* - Pathogenic Salmonella bacteria found in food which, if ingested in sufficient numbers, may cause salmonellosis in humans.

*Salmonellosis*- Foodborne disease caused by pathogenic Salmonella strains.

*Sanitization* - The application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

*Secretary* - The Secretary of the Department.

*Slacking* - The process of moderating the temperature of food such as allowing a food to gradually increase from a temperature of -23°C (-10°F) to - 4°C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

*Staphylococcus* - Spherical bacteria which occur in grape-like clusters, certain types of which cause food poisoning by releasing toxins.

*Supervisory employee* - An owner or a person employed by or designated by the business owner to fulfill the requirements of the act, AND WHO HAS SUPERVISORY AUTHORITY AND IS RESPONSIBLE FOR THE STORAGE, PREPARATION, DISPLAY OR SERVING OF FOODS TO THE PUBLIC IN ESTABLISHMENTS REGULATED BY THE DEPARTMENT OR LOCAL HEALTH ORGANIZATIONS..

*Temperature danger zone* - The temperature range [between 45° F and 140° F,] which is favorable for the growth of many types of pathogenic organisms in potentially hazardous foods.

*Test strips* - Indicator papers which, when immersed, assume a color that can be compared to a known color standard to measure sanitizer strength.

*Time and temperature* - Important factors in controlling the growth of pathogenic organisms in potentially hazardous foods.

*Toxin* - A poisonous substance produced by pathogenic organisms.

*Transmissibility* - The ability of a disease to be conveyed person-to-person, organism-to-person, food-to-person, [person to food] PERSON-TO-FOOD.

*Virus* - An intracellular, parasitic microorganism that is smaller than a bacterium.

*Warewashing* - The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

*Water activity* - [The] A measure of the free moisture in a food. The term is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol AW (aw).

### **§ 76.3. Requirements for food establishments.**

(a) *Industry-specific categories of food establishments.* A food establishment that is not exempt from compliance under § 76.1(d) (relating to compliance) shall be classified under one or more of the following industry-specific categories:

(1) Food processor that manufactures potentially hazardous foods.

(2) Food service that prepares [and] POTENTIALLY HAZARDOUS FOODS FOR THE CONSUMER, OR serves potentially hazardous foods to the consumer, OR BOTH.

(3) Bakery that processes potentially hazardous foods.

(4) Retail food store that offers potentially hazardous food THAT IS NOT EXEMPT UNDER § 76.1(d) to the consumer.

(5) Frozen dessert manufacturer.

(b) *Certified supervisory employee.* A food establishment shall employ or designate at least one certified supervisory employee who is certified with respect to the industry-specific category of the food establishment. IF A FOOD ESTABLISHMENT FALLS WITHIN MORE THAN ONE OF THE INDUSTRY-SPECIFIC CATEGORIES SET FORTH IN SUBSECTION (A), THE FOOD ESTABLISHMENT SHALL EMPLOY OR DESIGNATE ONE OR MORE CERTIFIED SUPERVISORY

EMPLOYEES SUCH THAT, IN THE AGGREGATE, THERE IS A CERTIFIED SUPERVISORY EMPLOYEE WHO IS CERTIFIED WITH RESPECT TO EACH OF THE APPLICABLE INDUSTRY-SPECIFIC CATEGORIES OF THE FOOD ESTABLISHMENT

(c) *New food establishment.* A new food establishment shall [bring itself into compliance] COMPLY with subsection (b) within 90 days of the date it commences operation.

(d) *Employee turnover.* If a food establishment loses its only certified supervisory employee through employee turnover or for any other reason, the food establishment shall [bring itself into compliance] COMPLY with subsection (b) within three months of the date it lost its previous certified supervisory employee.

(e) *Certification records.* A food establishment shall maintain, AT THE FOOD ESTABLISHMENT SITE, [the following information at the food establishment site:

- (1) The name of each certified supervisory employee in its employ.
- (2) The name of each certified supervisory employee who has been in its employ in the past year.
- (3) The certificate number of each certified supervisory employee referenced in paragraphs (1) and (2).
- (4) The industry-specific category of food establishment with respect to which a certified supervisory employee referenced in paragraphs (1) and (2) was certified.
- (5) The issuance and expiration dates of the certificate of any certified supervisory employee referenced in paragraphs (1) and (2).
- (6) The date it lost any certified supervisory employee within the past year - whether through employee turnover or other change in status.]

A LIST OF CERTIFIED SUPERVISORY EMPLOYEES UNDER ITS EMPLOYMENT DURING THE LAST 4 MONTHS INCLUDING: NAME, CERTIFICATE NUMBER, CERTIFICATION CATEGORY, ISSUANCE DATE, EXPIRATION DATE, DATE EMPLOYMENT BEGAN AND DATE EMPLOYMENT TERMINATED.

(f) *Availability of records.* Upon request by the Department, a food establishment shall make the records described in subsection (e) available for inspection by the Department during [reasonable hours] NORMAL BUSINESS HOURS OF THE FOOD ESTABLISHMENT.

(g) *Posting of certificate.* A food establishment shall post the original certificate of its certified supervisory employee in public view at its business location.

(h) *Return of certificate.* A certificate is the property of the Department and is issued to the individual person identified on its face. A FOOD ESTABLISHMENT SHALL PROMPTLY DELIVER THE CERTIFICATE TO A CERTIFIED SUPERVISORY EMPLOYEE WHO LEAVES THE EMPLOY OF THE FOOD ESTABLISHMENT OR WHO OTHERWISE CEASES TO BE A CERTIFIED SUPERVISORY EMPLOYEE WITH RESPECT TO THAT ESTABLISHMENT.

#### **§ 76.4. Eligibility to apply for certification.**

A person shall SUCCESSFULLY complete an approved certification TRAINING program and obtain a score of 70% or higher on an approved certification examination in order to be eligible to apply to the Department for certification.

**§ 76.5. Certification TRAINING programs: obtaining the Department's approval.**

(a) *Approval required.* A person shall obtain the Department's approval of a training program before the CERTIFICATION training program will be considered an approved certification TRAINING program for purposes of the act and this chapter. [Revisions] SUBSTANTIVE REVISIONS or changes to a previously-approved certification TRAINING program shall also be approved by the Department. ALTHOUGH NON-SUBSTANTIVE REVISIONS TO A PREVIOUSLY-APPROVED CERTIFICATION TRAINING PROGRAM DO NOT REQUIRE APPROVAL OF THE DEPARTMENT, NOTICE OF THESE NON-SUBSTANTIVE REVISIONS SHALL BE COMMUNICATED IN WRITING TO THE DEPARTMENT, AT THE ADDRESS IN § 76.16 (RELATING TO CONTACTING THE DEPARTMENT), BEFORE BEING IMPLEMENTED. Approval under this section authorizes a person to develop and approve certification examinations, conduct certification examinations and certify the results of certification examinations to the Department in accordance with this chapter.

(b) *General requirements for approval.* The Department will approve a certification TRAINING program if it addresses [an] AT LEAST ONE industry-specific category of food establishment described in § 76.3(a) (relating to requirements for food establishments), meets the food safety protection and training standards described at § 76.7 (relating to certification TRAINING programs: food safety protection and training standards) and has been recommended for approval by the Advisory Board. A SINGLE CERTIFICATION TRAINING PROGRAM MAY BE APPROVED WITH RESPECT TO MORE THAN ONE INDUSTRY-SPECIFIC CATEGORY OF FOOD ESTABLISHMENT.

(c) *Obtaining an application form.* The Department will provide an application form for certification TRAINING program approval, or an application form for approval of revisions or changes to a previously-approved certification TRAINING program, upon request. Requests for these forms shall be directed to the Department at the address in § 76.16 (relating to contacting the Department).

(d) *Contents: application for certification TRAINING program approval.* The application form for certification TRAINING program approval shall require the following information:

- (1) The applicant's name, address and telephone number.
- (2) A course syllabus demonstrating that the program would meet the minimum HOUR AND content requirements in § 76.7 (relating to certification TRAINING programs: food safety protection and training standards).
- (3) The industry-specific category OR CATEGORIES of food establishment, as described in § 76.3(a) (relating to requirements for food establishments), to be addressed by the certification TRAINING program.
- (4) A copy of the examination to be administered at the conclusion of the certification TRAINING program, together with an answer key for that examination, if these documents are available.
- (5) A copy of all teacher materials for the certification TRAINING program, unless the certification TRAINING program is a home-study program.



(6) A copy of all materials to be distributed to persons taking the program.

[(7) The proposed sites and dates of the certification program, if known, unless the program is a home-study program.]

[(8)] (7) If the certification program is a home study program, the proposed site and date the approved certification examination is to be administered.

[(9)] (8) Other information the Department might reasonably require IN EVALUATING THE CERTIFICATION TRAINING PROGRAM.

(e) *Contents: application for approval of changes or revisions to a previously-approved certification TRAINING program.* The application form for approval of changes or revisions to a previously-approved certification TRAINING program shall [requires] REQUIRE the applicant's name, address and telephone number and only such information listed in subsection (d) that is relevant to the change or revision with respect to which approval is sought.

(f) *Deadline for filing the application.* An application for certification TRAINING program approval or for approval of changes or revisions to a previously-approved certification TRAINING program shall be delivered to the Department, at the address in § 76.16 (relating to contacting the Department), at least 90 days in advance of the proposed date upon which the program is to be conducted.

(g) *Departmental and Advisory Board action on application.* THE DEPARTMENT AND THE ADVISORY BOARD WILL CONSIDER APPLICATION MATERIALS SUBMITTED TO THEM UNDER SUBSECTION (D)(4),(5) AND (6) CONFIDENTIAL AND THE PROPRIETARY DOCUMENTS OF THE APPLICANT, AND WILL MAKE NO DISTRIBUTION OF THESE MATERIALS. The Advisory Board will consider whether to recommend Departmental approval of a certification TRAINING program. If [the] A SIMPLE majority of a quorum of the Advisory Board recommends Departmental approval of a certification TRAINING program, the Department will grant its approval, if the other criteria in subsection (b) are met. The Department will mail the applicant its written approval of the certification TRAINING program, its denial of approval or a request for additional clarification or documentation.

#### **§ 76.6. Certification TRAINING programs: audit by Department.**

The Department may attend and audit an approved certification TRAINING program to ascertain whether the program is conducted in accordance with the requirements of the Act and in conformity to the program syllabus. A person offering or conducting an approved certification TRAINING program shall allow the Department's auditors entry to the program and provide copies of course materials.

#### **§ 76.7. Certification TRAINING Programs: food safety protection and training standards.**

(a) *MINIMUM HOURS OF INSTRUCTION/Overview of topics.* A CERTIFICATION TRAINING PROGRAM SHALL CONSIST OF AT LEAST 15 HOURS OF INSTRUCTION RELEVANT TO THE INDUSTRY-SPECIFIC CATEGORY WITH RESPECT TO WHICH CERTIFICATION IS SOUGHT. As

described in detail in subsections (b) - (h), a CERTIFICATION training program shall contain instruction in the following topics FOR THE MINIMUM HOURS INDICATED:

- (1) Foodborne illness: TWO HOURS
- (2) Time and temperature: TWO HOURS
- (3) Relationship between personal hygiene and food safety: THREE HOURS
- (4) Food safety tracking system: THREE HOURS
- (5) Cleaning and sanitizing: TWO HOURS
- (6) Facilities and equipment layout: TWO HOURS
- (7) Statutory and regulatory requirements: ONE HOUR

(b) *Topic: foodborne illness.* [A portion] AT LEAST TWO HOURS of the instruction in a CERTIFICATION training program shall pertain to the topic of foodborne illness relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of foodborne illness. At a minimum this shall include the following terms:

- (i) Bacteria.
- (ii) Communicable disease.
- (iii) Confirmed disease outbreak.
- (iv) Fungi.
- (v) Potentially hazardous foods.
- (vi) Infection.
- (vii) Intoxication.
- (viii) Parasite.
- (ix) Pathogenic organism.
- (x) Time and temperature.
- (xi) Virus.

- (2) Microorganisms that commonly cause foodborne infection or intoxication.
- (3) The process by which microorganisms cause foodborne illness.
- (4) The definition, characteristics and recognition of potentially hazardous foods.
- (5) Factors that contribute to foodborne illness.
- (6) Prevention of food contamination from employees, equipment, premises, utensils and consumers.
- (7) Prevention of food contamination from chemicals.
- (8) EMERGING PATHOGENS.

(c) *Topic: time and temperature.* [A portion] AT LEAST TWO HOURS of the instruction in a CERTIFICATION training program shall pertain to the topic of time and temperature RELEVANT TO THE INDUSTRY-SPECIFIC CATEGORY WITH RESPECT TO WHICH CERTIFICATION IS SOUGHT. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of time and temperature requirements. At a minimum this shall include the following terms:

- (i) Bacteria growth.
- (ii) Contamination.
- (iii) Critical control point.
- (iv) Critical item.
- (v) Cross-contamination.

- (vi) Food contact surface.
- (vii) Hermetically sealed container.
- (viii) Lag phase.
- (ix) Log phase.
- (x) Ready-to-eat foods.
- (xi) Reduced oxygen packing.
- (xii) Slacking.
- (xiii) Temperature danger zones.
- (xiv) Water activity.
- [(xv) Emerging pathogens.]

(2) Prime factors which control the growth, survival and toxin production rate of pathogenic microorganisms in food during receiving, storing, cooking, thawing, cooling, preparation, holding/displaying, serving, freezing, transporting, reheating and storing after production.

(3) The types, uses and calibration of food thermometers.

(4) Proper food temperatures during refrigeration, freezing, cooling, hot holding, cooking, re-heating, thawing and preparation.

(d) *Topic: relationship between personal hygiene and food safety.* [A portion] AT LEAST THREE HOURS of the instruction in a CERTIFICATION training program shall pertain to the topic of the relationship between personal hygiene and food safety RELEVANT TO THE INDUSTRY-SPECIFIC CATEGORY WITH RESPECT TO WHICH CERTIFICATION IS SOUGHT. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of the relationship between personal hygiene and food safety. At a minimum this shall include the following terms:

- (i) Asymptomatic.
- (ii) *Escherichia coli*.
- (iii) Hepatitis A infection.
- (iv) Highly susceptible group.
- (v) Pathogenic organism.
- (vi) *Salmonella enteritidis*.
- (vii) *Staphylococcus*.
- (viii) Transmissible.

(2) Prevention of food contamination by food establishment [employee] EMPLOYEES, including the following subjects:

- (i) Handwashing techniques and frequency.
- (ii) Relationship of hand contact to foodborne illness.
- (iii) Contamination by poor hygienic practices such as sneezing, coughing and scratching.
- (iv) Clothing.
- (v) Fingernails.
- (vi) Eating, drinking or using tobacco.
- (vii) Hair restraint.
- (viii) Animals in the workplace.

(3) Employee health, including the following subjects:

- (i) Infections or diseases which can be transmitted by open wound, sinus infection, virus or sore throat.
  - (ii) Identifying employees who may transmit infection or disease.
  - (iii) High risk groups.
  - (iv) Imposition and removal of employee exclusions and restrictions.
  - (v) Mandatory and voluntary reporting of foodborne illness.
- (4) Preventive measures such as training, written cleaning and sanitation schedules and procedures, self-inspection, integrated pest management and preventative maintenance.
- (e) *Topic: food safety tracking system.* [A portion] AT LEAST THREE HOURS of the instruction in a CERTIFICATION training program shall pertain to the topic of food safety tracking systems RELEVANT TO THE INDUSTRY-SPECIFIC CATEGORY WITH RESPECT TO WHICH CERTIFICATION IS SOUGHT. This instruction shall address the following:
- (1) Terms and definitions necessary to an understanding of a food safety tracking system. At a minimum this shall contain the following terms:
    - (i) Adulteration.
    - (ii) Contamination.
    - (iii) Critical control point.
    - (iv) Cross-contamination.
    - (v) HACCP [or Hazard Analysis Critical Control Point].
    - (vi) Product protection.
  - (2) Receiving food, including the following subjects:
    - (i) Approved sources.
    - (ii) Condition of food.
    - (iii) Thermometers and temperature checks.
    - (iv) Rejection for adulteration, temperature violations, distressed merchandise or condition of carrier.
  - (3) Safe storage of food, including the following subjects:
    - (i) Dry storage temperature and practices.
    - (ii) Refrigeration and [freezing] FREEZER holding temperatures and product protection.
    - (iii) Shelf life.
    - (iv) Cross-contamination and adulteration.
    - (v) Product protection in retail service/display areas and storage areas.
    - (vi) Product labeling.
    - (vii) Labeling of poisonous or toxic materials.
    - (viii) Original containers.
    - (ix) Working containers.
    - (x) Food storage prohibitions, including locker rooms, toilet rooms, garbage rooms and under sewer lines.
  - (4) Preparation and processing of food, including the following subjects:
    - (i) Personal hygiene.
    - (ii) Practices regarding disposable gloves.
    - (iii) Contamination by chemical or physical additives.
    - (iv) Cross-contamination.

- (v) Equipment/utensils.
- (vi) Hazards to humans in using equipment.
- (vii) Machine guards, slicer blades and protective light shields.
- (viii) Corrective actions.
- (ix) Potentially hazardous foods.
- (x) HACCP.
- (xi) Critical control point.

(f) *Topic: Cleaning and sanitizing.* [A portion] AT LEAST TWO HOURS of the instruction in a CERTIFICATION training program shall pertain to the topic of cleaning and sanitizing RELEVANT TO THE INDUSTRY-SPECIFIC CATEGORY WITH RESPECT TO WHICH CERTIFICATION IS SOUGHT. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of cleaning and sanitizing procedures. At a minimum this shall contain the following terms:

- (i) Adulteration.
- (ii) Air dry.
- (iii) Bleach.
- (iv) CIP.
- (v) Cleaning.
- (vi) Contamination.
- (vii) Cross-contamination.
- (viii) Detergent.
- (ix) Easily cleanable.
- (x) Food contact surface.
- (xi) Nonfood contact surface.
- (xii) pH.
- (xiii) ppm.
- (xiv) Sanitization.
- (xv) Test strips.
- (xvi) Warewashing.
- (xvii) Quaternary ammonium compound.

(2) MSDS Fact sheets.

(3) Proper use of hot water or chemicals in sanitizing.

(4) The difference between cleaning and sanitizing.

(5) Types of sanitizers, their usage and the use of test strips.

(6) Detergents.

(7) Procedures to wash-rinse-sanitize.

(8) The frequency with which food contact surfaces, utensils, equipment and nonfood contact surfaces should be sanitized.

(9) Equipment.

(10) Manual warewashing.

(11) Mechanical warewashing.

(12) The proper use of cleaning methods such as air drying, wiping cloths, CIP and water temperature.

(g) *Topic: Facilities and equipment layout.* [A portion] AT LEAST TWO HOURS of a CERTIFICATION training program shall pertain to the topic of facilities

and equipment layout RELEVANT TO THE INDUSTRY-SPECIFIC CATEGORY WITH RESPECT TO WHICH CERTIFICATION IS SOUGHT. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of the proper layout of equipment and facilities. At a minimum this shall contain the following terms:

- (i) Air gap.
- (ii) Backflow device.
- (iii) Cleanability.
- (iv) Potable water.
- (v) Handwash sink
- (vi) Plan review.

(2) Proper equipment design and location.

(3) Construction of floors, walls and ceilings.

(4) Design of equipment such as refrigeration, hot holding, heating, ventilation, pest control, lighting and freezer equipment, and design of the buildings in which the equipment is located.

(5) Acceptable water sources, water quality and quantity and water distribution systems.

(6) Plumbing design, construction, location, materials and operation.

(7) Management of solid and liquid waste, recyclables, refuse and returnables.

(8) Review of plans for equipment and building lay-out and design.

(h) *Topic: Statutory and regulatory requirements.* [A portion] AT LEAST ONE HOUR of a training program shall pertain to the topic of statutory and regulatory requirements RELEVANT TO THE INDUSTRY-SPECIFIC CATEGORY WITH RESPECT TO WHICH CERTIFICATION IS SOUGHT. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of the requirements imposed by the act and this chapter. At a minimum this shall contain the following:

- (i) The act.
- (ii) The certificate.
- (iii) The certified supervisory employee.

(2) Statutes and regulations relevant to the industry-specific category of food establishment that is the subject of the approved certification program.

#### **§ 76.8. Format of a certification examination.**

Although it is recommended that a certification examination consist of no fewer than 100 questions, under no circumstances may a certification examination consist of fewer than 80 questions. The questions shall [be multiple choice questions, true or false questions or a combination thereof that] adequately test food protection knowledge with respect to an industry-specific category of food establishment described in § 76.3 (a) (relating to requirements for food establishments).

#### **§ 76.9. Reporting results of a certification examination.**

A person who proctors a certification examination shall, within [20] 30 CALENDAR days of proctoring the examination, mail or delivery to any person who

took the examination written confirmation of that person's examination score, the date and location of the examination and the industry-specific category of food establishment addressed in the examination. The examination score shall be expressed as the percentage of correct answers. Within that same [20-day] 30-DAY time period the proctor shall mail the same information to the Department at the address set forth at § 76.16 (relating to contacting the Department), using a form provided by the Department upon request.

**§ 76.10. Applying for certification.**

(a) *Application required.* A person who has attained a score of 70% or higher on a certification examination may apply to the Department for certification. Certification is granted through issuance of the certificate described at § 76.11 (relating to certificate).

(b) *Form of application.* A person seeking certification under the act, OR ANY OTHER PERSON, may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The application form shall require the following information:

- (1) The name and mailing address of the person seeking certification.
- (2) The location and dates of any approved certification program completed by the person seeking certification.
- (3) The location and date of the certification examination.
- (4) The industry-specific food establishment category (as described at § 76.3(a) (relating to requirements for food establishments)) with respect to which certification is sought.
- (5) Other information the Department might reasonably require IN DETERMINING WHETHER TO ISSUE THE APPLICANT A CERTIFICATE.

(c) *Application fee.* A person applying for certification under this section shall pay an application fee of \$20, by check or money order made payable to the ["Pa. Department of Agriculture"] "COMMONWEALTH OF PENNSLVANIA". This payment shall accompany the application.

(d) *Department action on application.* The Department will, within [20] 30 days of receiving an application and the application fee, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation.

**§ 76.11. Certificate.**

(a) *Contents of certificate.* A certificate will bear the following information:

- (1) The name of the person to whom it is issued.
- (2) The industry-specific category of food establishment [category], as described at § 76.3(a) (relating to requirements for food establishments), with respect to which the person is certified.
- (3) The date upon which the certificate was issued.
- (4) The expiration date of the certificate, which shall be 5 years from the date of issuance.
- (5) A unique identification number.
- (6) A statement that the Department has determined the person identified on the certificate to possess adequate food protection knowledge and to be a

certificateholder with respect to the industry-specific category of food establishment designated on the certificate.

(7) Other information the Department might reasonably include ON THE CERTIFICATE.

(b) *Ownership of certificate.* A certificate issued by the Department will remain the property of the Department. A certificateholder, certified supervisory employee, food establishment or other person having physical possession of a certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

(c) *Obligation to allow display.* A certified supervisory employee shall allow his employer to display the certificate issued by the Department, as required at § 76.3(g). Upon termination of a certified supervisory employee's employment, the employer shall surrender the certificate to the certificateholder named on the certificate.

(D) **REPLACEMENT OF CERTIFICATE.** THE DEPARTMENT WILL ISSUE A CERTIFICATEHOLDER A REPLACEMENT CERTIFICATE AND MAIL IT TO THE CERTIFICATEHOLDER WITHIN 30 DAYS OF RECEIVING A WRITTEN REQUEST FOR A REPLACEMENT CERTIFICATE FROM THE CERTIFICATEHOLDER AND AN EXPLANATION OF THE NEED FOR THE REPLACEMENT CERTIFICATE.

#### **§ 76.12. Renewal of certification.**

(a) *General requirement.* A certificateholder shall obtain at least 7.5 hours of approved continuing education in the area of food safety and sanitation every 5 years, commencing with the date the certificate is issued. An approved continuing education course will not require a written examination as a condition of completion. If a certificateholder fails to obtain this approved continuing education and deliver a complete certification renewal application to the Department prior to the expiration date of the certificate, the certificate shall expire and the certificateholder shall successfully complete an approved certification program and a certification examination before certification will be granted.

(b) *Application for renewal.* A person seeking renewal of certification under this section, OR ANY OTHER PERSON, may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The form shall require the following information:

- (1) The name and mailing address of the applicant.
- (2) Copies of course descriptions, course-completion certificates, college course transcripts and descriptions and similar documentation to evidence compliance with the requirement set forth in subsection (a).
- (3) The industry-specific food establishment category OR CATEGORIES, as described at § 76.3(a), with respect to which the applicant is certified.
- (4) The identification number and expiration date of the certificate.
- (5) Other information the Department might reasonably require IN CONSIDERING RENEWAL OF THE CERTIFICATE.

(c) **APPLICATION FEE.** A PERSON APPLYING FOR RECERTIFICATION UNDER THIS SECTION SHALL PAY AN APPLICATION FEE OF \$20, BY CHECK



OR MONEY ORDER MADE PAYABLE TO THE "COMMONWEALTH OF PENNSYLVANIA". THIS PAYMENT SHALL ACCOMPANY THE APPLICATION.

(D) *Departmental action on application.* The Department will, within 30 days of receiving an application, mail the applicant a certificate (as described at § 76.11(a) (relating to certificate)), its denial of renewal of certification or a request for additional clarification or documentation.

**§ 76.13. Obtaining Departmental approval of a continuing education course.**

(a) *Approval required.* A person shall obtain the Department's approval of a continuing education course before the course will be considered an approved continuing education course for purposes of § 76.12 (relating to renewal of certification). Revisions or changes to a previously-approved continuing education course shall also be approved by the Department.

(b) *General requirements for approval.* The Department will approve a continuing education course if it instructs participants in current food protection practices and has been recommended for approval by the Advisory Board.

(c) *Application for approval.* A person seeking the Department's approval of a continuing education course under this section may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The form shall require the following information:

- (1) The name and mailing address of the applicant.
- (2) A course syllabus demonstrating that the course addresses regulatory or food industry changes, updates or advancements, OR OFFERS A GENERAL REVIEW OF FOOD SAFETY CONSIDERATIONS AND PROCEDURES.
- (3) A copy of all teaching materials for the course.
- (4) A copy of all materials to be distributed to persons taking the course.
- (5) The proposed sites and dates of the course.
- (6) Such other information as the Department might reasonably require IN EVALUATING WHETHER TO APPROVE THE CONTINUING EDUCATION COURSE.

(d) *Departmental and Advisory Board action on Application.* THE DEPARTMENT AND THE ADVISORY BOARD WILL CONSIDER APPLICATION MATERIALS SUBMITTED TO THEM UNDER SUBSECTION (C)(3) AND (4) CONFIDENTIAL AND THE PROPRIETARY DOCUMENTS OF THE APPLICANT, AND WILL MAKE NO DISTRIBUTION OF THESE MATERIALS. The Advisory Board will consider whether to recommend Departmental approval of the continuing education course. If [the] A SIMPLE majority of a quorum of the Advisory Board recommends Departmental approval of a continuing education course, the Department will grant its approval, if the other requirements of subsection (b) are met. The Department will mail the applicant its written approval of the continuing education course, its denial of approval or a request for additional clarification or documentation.

**§ 76.14. Reciprocity with other states.**

The Department may accept certification issued to a person by another state if both of the following occur:

- (1) The other state has requirements for certification that are comparable to those imposed by the act.
- (2) The Department and the other state jurisdiction have entered into a reciprocal agreement to accept each state's certification program as meeting the requirements of the Act.

**§ 76.15. Suspension or revocation of certification.**

(a) *Basis for action.* The Department may suspend or revoke the certification of a certificateholder if that person does one or more of the following:

- (1) Violates a provision of this chapter.
- (2) Violates another sanitation regulation.
- (3) Violates the Public Eating and Drinking Place Law or its attendant regulations.
- (4) Violates the Food Act or its attendant regulations.

(b) *Notice.* The Department will provide a certificateholder with written notice of its intention to suspend or revoke certification, which will APPRISE THE CERTIFICATEHOLDER OF THE DURATION OF THE SUSPENSION OR REVOCATION AND afford that person notice and opportunity for an administrative hearing before the Department prior to the effective date of the suspension or revocation.

(c) *Delivery of notice.* The Department will deliver the notice described in subsection (b) to the affected certificateholder by personal service or by regular mail to the address provided by the certificate holder on his OR HER application for certificate under § 76.10 (relating to applying for certification).

(D) *REINSTATEMENT.* IF A PERIOD OF SUSPENSION ENDS *BEFORE* THE EXPIRATION DATE OF THE SUSPENDED CERTIFICATE, THE CERTIFICATE SHALL BE CONSIDERED REINSTATED AT THE END OF THE SUSPENSION PERIOD. IF A CERTIFICATE IS REVOKED, OR IF IT IS SUSPENDED AND THE PERIOD OF SUSPENSION ENDS *AFTER* THE EXPIRATION DATE OF THE SUSPENDED CERTIFICATE, THE CERTIFICATE IS EXPIRED AND THE HOLDER OF THE EXPIRED CERTIFICATE MUST REAPPLY FOR CERTIFICATION IN ACCORDANCE WITH THE ACT AND THIS CHAPTER.

**§ 76.16. Contacting the Department.**

A person seeking applications or information relating to the act or this chapter shall forward [his] THE request, in writing, to the following address:

ATTN: Food Employee Certification  
Department of Agriculture  
Bureau of Food Safety and Laboratory Services  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

**§ 76.17. Preemption and local governmental authority.**

(a) *General.* The regulation of food safety protection and training standards for employees of food establishments is preempted by the Department except that, in accordance with [section 6503(f) of] the act (AT 3 PA.C.S. § 6503(f)) (relating to certification advisory board and programs), any food employee certification program

established by a county, city, borough or incorporated town or township prior to September 1, 1994 [,] may remain in effect.

(b) *Limitation of local certification.* If a county, city, borough, incorporated town or township elects to operate a food employee certification program that was in existence prior to September 1, 1994, the certification of persons under that local program shall be valid only within the geographic boundaries of the local government unit. This program validity may be extended to other states or local government units through [reciprocal] agreements among other states, or local government units which operate food employee certification programs that predate September 1, 1994.

(c) *Option of certain local government units.* A county, city, borough, incorporated town or township having a food employee certification program that was in effect prior to September 1, 1994 [,] may, at its option, apply to the Department in accordance with the procedure in § 76.5 (relating to approved certification TRAINING programs: obtaining the Department's approval) to become an approved certification TRAINING program with respect to one or more industry-specific categories of food establishments.

(d) *Effect of a local government unit's decision with respect to exercising option.* If a county, city, borough, incorporated town or township having a food employee certification program which was in effect prior to September 1, 1994 [,] does not exercise the option described in subsection (c) or does not obtain Departmental approval of its certification TRAINING program with respect to any particular industry-specific category of food establishment, the unit of local government shall retain exclusive responsibility for certification of the food employees who would otherwise fall into that industry-specific category.

#### **§ 76.18. Advisory Board.**

(a) *Purpose.* The Advisory Board shall review and recommend Departmental approval of industry-specific certification programs which meet the requirements of the act and this chapter.

(b) *Composition.* The Advisory Board will be appointed by the Secretary and consist of at least 21 members. The membership of the Advisory Board will be as follows:

- (1) The Secretary, or a designee, who will serve as chairperson.
- (2) The Chairperson of the Agriculture and Rural Affairs Committee of the Senate, or a designee.
- (3) The Chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, or a designee.
- (4) The Minority Chairperson of the Agriculture and Rural Affairs Committee of the Senate, or a designee.
- (5) The Minority Chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, or a designee.
- (6) A consumer representative.
- (7) Two representatives of production agriculture.
- (8) At least one person recommended by each of the following:
  - (i) Pennsylvania Association of Milk Dealers.
  - (ii) Pennsylvania Restaurant Association.

- (iii) Pennsylvania Food Merchants Association.
- (iv) Pennsylvania Convenience Store Council.
- (v) Pennsylvania Bakers Association.
- (vi) Pennsylvania Food Processors Association.
- (vii) Pennsylvania Veterinary Medical Association.
- (viii) County Commissioners Association of Pennsylvania.
- (ix) Pennsylvania League of Cities and Municipalities.
- (x) Pennsylvania State Association of Boroughs.
- (xi) Pennsylvania State Association of Township Commissioners.
- (xii) Pennsylvania State Association of Township Supervisors.
- (xiii) Pennsylvania School Food Service Association.

(9) At least one of the Advisory Board members described in paragraph (8) shall have experience in the field of public health.

(c) *Terms of appointees.* Advisory Board members described in subsection (b)(1), (2), (3), (4) or (5) shall be *ex officio* members. The terms of the initial appointees of the Secretary under subsection (b)(6) - (8) will be 2, 3 or 4 years, as determined by the Secretary, and will be staggered so that the terms of approximately 1/3 of these initial appointees expire in each of the second, third and fourth years of the Advisory Board's existence. Thereafter, the term of each of these appointees shall be 3 years. The term of a person appointed to replace another member whose term has not expired shall be only the unexpired portion of that term. Persons may be appointed to successive terms.

(D) *QUORUM.* A SIMPLE MAJORITY OF THE ADVISORY BOARD MEMBERSHIP SHALL CONSTITUTE A QUORUM OF THAT BODY. A SIMPLE MAJORITY OF A QUORUM IS REQUIRED FOR ANY FORMAL ACTION OF THE ADVISORY BOARD.

**§ 76.19. Civil penalties.**

(a) *General.* The Department may assess a civil penalty of up to \$300 against any person or food establishment that violates any provision of the act or this chapter for the first offense. The Department may assess a penalty of up to \$1,000 for each subsequent offense.

(b) *Notice.* The Department will provide a person or food establishment written notice of any violation of the act or this chapter and an opportunity for an administrative hearing on the violation prior to the imposition of a civil penalty.

(c) *Time for correction of condition giving rise to civil penalty.* If the Department assesses a civil penalty against a food establishment for failing to have the required certified supervisory employee, it will allow the food establishment a period of 90 days from the violation giving rise to the initial civil penalty before it may assess another civil penalty. During that 90-day period, the food establishment shall bring itself into compliance with the act and this chapter.

# PROPOSED RULEMAKING

## DEPARTMENT OF AGRICULTURE

### Advance Notice of Proposed Rulemaking

The Department of Agriculture (Department) hereby gives advance notice of its intention to amend its regulations relating to animals and animal health. These regulations currently appear in 7 Pa. Code Part I (relating to Bureau of Animal Industry). The planned amendments are necessitated, in part, by 23 Pa.C.S. §§ 2301-2389 (relating to the Domestic Animal Law), which became effective on September 9, 1996, and which substantially revised, expanded and updated the Department's authority with respect to domestic animals.

Although section 2382(b) of the Domestic Animal Law allows the Department to enforce its current animal health regulations to the extent they are not inconsistent with that law, the Department seeks to accomplish the amendment of these regulations at the earliest date practicable. The Department is particularly interested in those regulatory provisions dealing with the prevention, detection, containment and elimination of transmissible disease of domestic animals.

The Department intends to accomplish this regulatory amendment by rescinding its regulations and supplanting them with entirely new regulatory provisions. The forthcoming regulations will be more logically-organized, succinct and user friendly.

#### *Proposed Format*

The Department's initial plan is to organize its regulatory authority with respect to domestic animals into five basic subparts, addressing the following general subjects:

- Subpart A. General Provisions
- Subpart B. Prevention of Dangerous Transmissible Diseases of Domestic Animals
- Subpart C. Dangerous Transmissible Disease Elimination
- Subpart D. Cooperative Domestic Animal Health Programs

In addition, the Department intends to rescind all of 7 Pa. Code Chapter 1 (relating to meat hygiene), since its underlying statutory authority, the Pennsylvania Meat and Poultry Hygiene Law of 1968 (31 P.S. §§ 483.1-483.24), has been preempted by Federal Legislation and regulations.

#### *Public Comments and Contact Person*

The Department of Agriculture encourages interested persons to participate in the preparation of the regulatory amendments described in this notice by submitting any suggested regulatory additions, deletions or changes to: Sherbyn Ostrich, Bureau of Animal Health and Diagnos-

tic Services, Department of Agriculture Building, 2307 North Cameron Street, Harrisburg, PA 17110-9408.

SAMUEL E. HAYES, Jr.,  
Secretary

[Pa.B. Doc. No. 97-976. Filed for public inspection June 20, 1997, 9:00 a.m.]

### [7 PA. CODE CH. 76]

#### Food Employee Certification

The Department of Agriculture (Department), Bureau of Food Safety and Laboratory Services (Bureau), proposes to adopt Chapter 76 (relating to food employee certification).

These regulations are proposed under authority of the Food Employee Certification Act (act), 3 Pa.C.S. §§ 6503(d) and 6505 (relating to certification advisory board and programs; and rules and regulations) which, respectively: (1) require the Department to adopt food safety protection and training standards for the certification of supervisory employees who are responsible for the storage, preparation, display or serving of food to the public in establishments regulated by the Department or local health organizations; and (2) delegate to the Department the power to adopt regulations necessary for the proper enforcement and administration of the act.

In summary, the act will require most food establishments in this Commonwealth to have at least one supervisory employee who has undergone food safety training and passed a written examination evidencing food safety knowledge. The training programs will be reviewed and approved by the Department. The Department will certify persons to conduct and approve tests and certify the results of these tests to the Department. The Department will issue a certificate to persons who take the required training and pass the required test.

The act was the product of an industry-driven initiative to establish minimum food safety training requirements to be met by at least one supervisory employee in most food establishments in this Commonwealth. These requirements are specific to the category of food establishment involved. Given the industry-driven nature of the act, the Department circulated drafts of the proposed regulations to groups representing a broad cross section of the food industry, and made revisions in response to comments and suggestions from these groups. The Department intends these regulations to establish the least intrusive and least burdensome standards and procedures by which to meet the responsibilities imposed on the Department by the act.

An overview of the major provisions of the proposed regulations follows:

A food establishment need not comply with the requirements of the act until July 1, 2001. Proposed § 76.1 (relating to compliance) restates this effective date, but also emphasizes that it is to a food establishment's advantage to comply in advance of that date. It also restates the statutory provisions exempting certain food establishments from having to comply with the act.

Proposed § 76.2 (relating to definitions) contains definitions from the act and the Food and Drug Administration

Food Code. When practicable, it is the intention of the Department to define terms as they are commonly defined in the food industry and thereby help to develop or preserve a common vocabulary. Numerous terms defined in this section are required topics of instruction in approved certification programs, as described in proposed § 76.7 (relating to certification programs: food safety protection and training standards). Although some sectors of the food industry would prefer the Department not include and define such a large number of terms in the proposed regulations, the Department believes it important to be as specific as possible with respect to the required topics of instruction in a certification program.

Proposed § 76.3 (relating to requirements for food establishments) accomplishes several purposes: it delineates the industry-specific categories of food establishments required under section 6503(d) of the act. It restates the major premise of the act, that a food establishment must employ or designate at least one supervisory employe who is certified under the act with respect to the appropriate industry-specific category of the food establishment. It also sets forth the basic recordkeeping requirements for food establishments, under which the Department can monitor compliance with the act.

Although proposed § 76.4 (relating to eligibility to apply for certification) essentially restates the requirements of the act as set forth in section 6504(b) of the act (relating to certification of employees), it has been the subject of concern among several food industry representatives who were afforded the opportunity to review earlier drafts of the proposed regulation. The act does not allow for those persons who have food safety knowledge and expertise in excess of what would be required under the proposed regulation to be certified under the act without completing a Department-approved training course and passing an examination.

Proposed § 76.5 (relating to certification programs: obtaining the department's approval) sets forth the basic requirements for Departmental approval of a certification program and details the process by which an application for approval may be obtained and submitted.

Proposed § 76.7 (relating to certification programs: food safety protection and training standards) details the minimum content requirements of a certification program.

Proposed § 76.8 (relating to format of a certification examination) requires that a certification examination consist of at least 80 questions. This number corresponds with the number of questions on examinations given in connection with several of the more popular food safety courses offered by industry on a Nationwide basis. The Department believes that—given the various areas of instruction required in a certification program—it is not unreasonable to require a minimum number of questions on a certification examination.

Proposed § 76.9 (relating to reporting results of a certification examination) is intended to ensure the Department and the candidate for certification receive notice of examination scores within a reasonable time after certification examinations are administered.

Proposed § 76.10 (relating to applying for certification) describes the process by which a person may apply for certification, and requires the Department to act on an application within 20 days of receipt.

Proposed § 76.11 (relating to certificate) describes the content of a certificate, the obligation of a person having

possession of a certificate to return it to the Department upon written demand and the requirement a food establishment display the certificate of its certified supervisory employe.

The act requires a certificate be renewed at 5 year intervals, imposes a continuing education requirement on certificateholders and requires the Department approve continuing education courses. These provisions appear in section 6504(f) of the act. Proposed §§ 76.12 and 76.13 (relating to renewal of certification; and obtaining Departmental approval of a continuing education course) set forth recertification requirements and procedures and the procedure for approval of continuing education programs.

Proposed § 76.14 (relating to reciprocity with other states) essentially restates the reciprocity provisions in section 6507 of the act (relating to suspension of certification).

Proposed § 76.15 (relating to suspension or revocation of certification) describes the circumstances under which a certificate can be suspended or revoked, and describes the due process to the afforded persons facing suspension or revocation.

Proposed § 76.17 (relating to preemption and local governmental authority) clarifies that local government food employe certification programs that predate September 1, 1994, may remain in effect and that a local government unit having a program may, at its option, seek Departmental approval of any portion of its program with respect to an industry-specific category of food establishment.

Proposed § 76.19 (relating to civil penalties) repeats the penalty provisions in section 6508 of the act (relating to civil penalties), but clarifies that the Department will afford a food establishment that is assessed a penalty for not having a certified supervisory employe a period of 90 days within which to come into compliance before the Department would again penalize the food establishment for the same violation.

#### *Fiscal Impact*

##### *Commonwealth*

The proposed regulations would not impose any costs on the Commonwealth or have any fiscal impact upon the Commonwealth beyond those costs and fiscal impacts imposed by the act itself. The act requires the Department devote employe time to the review of proposed training programs, the keeping of required records and other functions. Although the Department will inspect food establishments for compliance, employes of the Department are already charged with the responsibility to inspect and license food establishments. The addition of the inspection responsibilities imposed by the act will not appreciably increase the Department's costs.

##### *Political Subdivisions*

The proposed regulations would impose no costs and have no fiscal impact upon political subdivisions.

##### *Private Sector*

The proposed regulations will not impose costs or other adverse fiscal consequences beyond those imposed by the act itself. Under the act, most food establishments in this Commonwealth will have to ensure they have at least one certified supervisory employe. Although the food establishment might impose the costs of necessary training on the supervisory employe, it is more likely the food establishment, itself, would incur these costs.

## General Public

The proposed regulations would impose no costs and have no fiscal impact upon the general public. Although food establishments may incur some costs in obtaining certification for a supervisory employe, these costs are expected to be modest. In view of this expectation, and the fact that certification is valid for 5 years at a time, it is not likely any costs imposed by the act will measurably impact upon consumers.

## Paperwork Requirements

The act requires that the Department issue certificates to supervisory employes who successfully complete an approved training program and pass an examination. It also requires the Department monitor compliance and enforce its provisions. This will certainly result in an increase in paperwork. The proposed regulations, however, do not impose paperwork requirements beyond those imposed by the act itself.

## Regulatory Review

The Department submitted a copy of the proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on June 11, 1997, in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). The Department also provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it must so notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the proposed regulations.

## Contact Person

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Food Safety and Laboratory Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Martha M. Melton.

## Effective Date

The proposed regulations will become effective upon final adoption.

SAMUEL E. HAYES, Jr.,  
Secretary

**Fiscal Note:** 2-107. (1) General Fund; (2) Implementing Year 1996-97 is \$None; (3) 1st Succeeding Year 1997-98 is \$5,000; 2nd Succeeding Year 1998-99 is \$10,000; 3rd Succeeding Year 1999-00 is \$15,000; 4th Succeeding Year 2000-01 is \$30,000; 5th Succeeding Year 2001-02 is \$30,000; (4) Fiscal Year 1995-96 \$N/A; Fiscal Year 1994-95 \$N/A; Fiscal Year 1993-94 \$N/A; (7) General Government Operations; (8) recommends adoption.

## Annex A

## TITLE 7. AGRICULTURE

## PART IV. BUREAU OF MARKETING

## CHAPTER 76. FOOD EMPLOYE CERTIFICATION

Sec.	
76.1.	Compliance.
76.2.	Definitions.
76.3.	Requirements for food establishments.
76.4.	Eligibility to apply for certification.
76.5.	Certification programs: obtaining the Department's approval.
76.6.	Certification programs: audit by Department.
76.7.	Certification programs: food safety protection and training standards.
76.8.	Format of a certification examination.
76.9.	Reporting results of a certification examination.
76.10.	Applying for certification.
76.11.	Certificate.
76.12.	Renewal of certification.
76.13.	Obtaining Departmental approval of a continuing education course.
76.14.	Reciprocity with other states.
76.15.	Suspension or revocation of certification.
76.16.	Contacting the Department.
76.17.	Preemption and local governmental authority.
76.18.	Advisory Board.
76.19.	Civil penalties.

## § 76.1. Compliance.

(a) *Mandatory compliance.* On or after July 1, 2001, a food establishment shall comply with the act and this chapter, unless it is exempt under subsection (d).

(b) *Interim compliance optional.* A food establishment need not comply with the act or this chapter until July 1, 2001, but is encouraged to do so in advance of that date.

(c) *Benefit of interim compliance.* If a food establishment that voluntarily complies with the act and this chapter is the subject of an action to recover fines or penalties for a violation of the Food Act, and the violation occurs prior to July 1, 2000, the voluntary compliance of the food establishment will be considered a mitigating factor in determining whether the food establishment shall be assessed more than the minimum fine or civil penalty required by law.

(d) *Exemption for certain types of food establishments.* The following food establishments are exempt from the requirements of the act and this chapter:

(1) A food establishment where only commercially pre-packaged food is handled and sold.

(2) A food establishment that does not handle potentially hazardous food.

(3) A food establishment that is a food manufacturing facility engaged in the manufacture of prepackaged foods and which does not manufacture potentially hazardous food.

## § 76.2. Definitions.

The following word and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise or unless otherwise defined in the FDA Food Code, or a subsequent amendment thereof:

*Act*—3 Pa.C.S. Chapter 65 (relating to Food Employee Certification Advisory Board).

*Adulterated food*—Food that is considered adulterated under section 8 of the Food Act (31 P. S. § 20.8).

*Adulteration*—An action that creates adulterated food.

*Advisory Board or Board*—The Food Employee Certification Advisory Board.

*Air dry*—The exposure of wet articles to air for the purpose of drying through evaporation.



**Air gap**—The vertical distance between the point where water enters a plumbing fixture—such as a sink—and the level at which the plumbing fixture would overflow.

**Asymptomatic**—Presenting no evidence of disease.

**Backflow device**—A device that prevents liquid from flowing back or moving toward the source from which the liquid was introduced.

**Bacteria**—Single cell microorganisms.

**Bacteria growth**—Multiplication of bacteria through cell division.

**Bakery**—A food establishment in which baked products (breads, rolls, cakes, doughnuts, biscuits, pies, macaroni, spaghetti, noodles, and the like) are manufactured for human consumption.

**Bleach**—Sodium hypochlorite, a chemical sanitizer.

**CIP or cleaned in place**—Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. The term does not include the cleaning of equipment, such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

**Certificate**—A document issued by the Department to a particular person to evidence that the named individual has demonstrated adequate food protection knowledge and is certified for purposes of section 6503(d) of the act (relating to certification advisory board and programs) with respect to an industry-specific category of food establishment.

**Certificate holder**—A person holding a valid certificate, regardless of whether that person is a supervisory employe.

**Certified supervisory employe**—A supervisory employe holding a valid certificate.

**Cleanability**—The property of being cleanable or accessible for cleaning.

**Cleaning**—The process by which dirt or other foreign matter is removed from an article.

**Communicable disease**—An infectious disease transmissible to persons or animals by direct or indirect means.

**Confirmed disease outbreak**—A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illnesses.

**Contamination**—Soiling, staining, corrupting or infecting by contact or association.

**Critical control point**—A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

**Critical item**—An action which violates a food-sanitation standard and which may contribute to food contamination, illness or environmental degradation.

**Cross-contamination**—The transfer of bacteria or other microorganisms from one source to another.

**Department**—The Department of Agriculture of the Commonwealth.

**Detergent**—A cleaning agent.

**Easily cleanable**—

(i) A characteristic of a surface that:

(A) Allows effective removal of soil by normal cleaning methods.

(B) Is dependent on the material, design, construction and installation of the surface.

(C) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose and use.

(ii) The term includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in subparagraph (i) to different situations in which varying degrees of cleanability are required such as one of the following:

(A) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining.

(B) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

**Escherichia coli or E. coli**—Gram-negative rod-shaped bacteria normally present in the intestines of man and animals, which may be pathogenic and are indicative of fecal contamination when found in food or water.

**FDA Food Code**—A publication issued by the United States Food and Drug Administration which is available from the Department.

**Food**—A raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

**Food Act**—The Food Act (31 P. S. §§ 20.1—20.18).

**Food-contact surface**—One of the following:

(i) A surface of equipment or a utensil with which food normally comes into contact.

(ii) A surface of equipment or a utensil from which food may drain, drip or splash into a food, or onto a surface normally in contact with food.

**Food establishment**—A room, building, place or portion thereof or vehicle maintained, used or operated for the purpose of selling to the public, commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing, transporting or handling food. The term includes retail food stores and public eating and drinking licensees, except those portions of establishments operating exclusively under milk or milk products permits and those portions of establishments operating exclusively under United States Department of Agriculture inspection. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast, homestead or inn as defined in the Public Eating and Drinking Place Law.

**Food processor**—A food establishment that manufactures foods using methods such as cutting, grinding, chipping, peeling, baking, dicing, shredding, extrusion, drying, whipping, blanching, heating, extraction, smoking, freezing, fermenting, mixing or dehydrating, or that packages, cans, jars or otherwise places food in containers.

**Food service**—A food establishment that prepares and serves foods to the consumer. This category of food establishment includes restaurants, hotels, auction house



stands, hot dog vendors, flea market stands, nursing home kitchens, school cafeterias, college/university cafeterias, roadside stands, hand-dipped ice cream and yogurt sellers, college snack bars, stands at fairs and carnivals, caterers, snow-cone stands, camp kitchens, church kitchens, private clubs and associations, and food vendors at stadiums, racetracks, parks and public charity events.

**Foodborne disease outbreak—**

(i) An incident, except as specified in subparagraph (ii), in which:

(A) Two or more persons experience a similar illness after ingestion of a common food.

(B) Epidemiological analysis implicates the food as the source of the illness.

(ii) The term includes a single case of illness such as one person ill from botulism or chemical poisoning.

**Frozen dessert manufacturer—**A food establishment that is located in this Commonwealth and that is required to be licensed under authority of the Frozen Dessert Law (31 P. S. §§ 417.1—417.14).

**Fungi—**A division of lower plant life.

**H.A.C.C.P.—Hazard Analysis Critical Control Point—**A system that identifies and monitors specific foodborne hazards (biological, chemical or physical properties) that can adversely affect the safety of the food product.

**Handwash sink—**A sink specifically designated for hand washing.

**Hazard—**A biological, chemical or physical property that may cause an unacceptable consumer health risk.

**Hepatitis A infection—**A viral foodborne illness that can be transmitted from an infected person, through food, to another person.

**Hermetically sealed container—**A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

**Highly susceptible population—**A group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

**Infection—**A disease or condition due to the growth of microorganisms in a host.

**Intoxication—**Illness caused by ingestion of food containing a bacterial toxin.

**Lag phase—**The time period needed for bacteria to acclimate to a new environment, during which bacterial growth is limited or nonexistent.

**Log phase—**The time period which follows the lag phase and during which bacteria undergo accelerated growth.

**Nonfood contact surface—**Exposed surfaces which do not, under normal use, come into contact with food.

**pH—**The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

**ppm—**Parts per million, or milligrams per liter (mg/l).

**Parasite—**A living organism which derives its nourishment from another living organism.

**Pathogenic organism—**A disease-producing organism.

**Person—**A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

**Plan review—**The process by which plans and specifications for the construction, remodeling or alteration of a food establishment are reviewed for conformance to specified standards.

**Poisonous or deleterious substance—**A substance that would be considered poisonous or deleterious under section 11 of the Food Act (31 P. S. § 20.11).

**Potable water—**Water that is safe for human consumption.

**Potentially hazardous food—**A food which consists in whole or in part of milk or milk products, eggs, meats, poultry, fish, shellfish, edible crustaceans or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms. The term does not include foods that have a pH level of 4.6 or below or a water activity of 0.85 or less under standard conditions or food products in hermetically sealed containers processed to maintain commercial sterility.

**Product protection—**Safety measures used to prevent food contamination.

**Public eating and drinking place—**A place within this Commonwealth where, food or drink is served to or provided for the public, with or without charge, or a place which otherwise conforms to the definition in section 1 of the Public Eating and Drinking Place Law (35 P. S. § 655.1). The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

**Public Eating and Drinking Place Law—**The act of May 23, 1945 (P. L. 926, No. 369) (35 P. S. §§ 655.1—655.13).

**Quaternary ammonium compound—**A chemical sanitizer which is a derivative of ammonium hydroxide or its salts.

**Ready-to-eat food—**

(i) Food that is in a form that is edible without washing, cooking or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.

(ii) The term includes:

(A) Unpacked potentially hazardous food that is cooked to the temperature and time required for the specific food under the most current edition of FDA Food Code.

(B) Raw, washed, cut fruits and vegetables.

(C) Whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet.

(D) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks or shells are removed.

**Reduced oxygen packaging—**

(i) The reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a

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level below that normally found in the surrounding atmosphere, which is 21% oxygen.

(ii) The term includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen and vacuum packaging.

**Retail food store**—A food establishment or a section of a food establishment where food and food products are offered to the consumer and intended for off-premises consumption.

**Salmonella enteritidis**—Pathogenic Salmonella bacteria found in food which, if ingested in sufficient numbers, may cause salmonellosis in humans.

**Salmonellosis**—Foodborne disease caused by pathogenic Salmonella strains.

**Sanitization**—The application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

**Secretary**—The Secretary of the Department.

**Slacking**—The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of  $-23^{\circ}\text{C}$  ( $-10^{\circ}\text{F}$ ) to  $-4^{\circ}\text{C}$  ( $25^{\circ}\text{F}$ ) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

**Staphylococcus**—Spherical bacteria which occur in grape-like clusters, certain types of which cause food poisoning by releasing toxins.

**Supervisory employe**—An owner or a person employed by or designated by the business owner to fulfill the requirements of the act.

**Temperature danger zone**—The temperature range between  $45^{\circ}\text{F}$  and  $140^{\circ}\text{F}$ , which is favorable for the growth of many types of pathogenic organisms in potentially hazardous foods.

**Test strips**—Indicator papers which, when immersed, assume a color that can be compared to a known color standard to measure sanitizer strength.

**Time and temperature**—Important factors in controlling the growth of pathogenic organisms in potentially hazardous foods.

**Toxin**—A poisonous substance produced by pathogenic organisms.

**Transmissibility**—The ability of a disease to be conveyed person-to-person, organism-to-person, food-to-person, person to food or otherwise.

**Virus**—An intracellular, parasitic microorganism that is smaller than a bacterium.

**Warewashing**—The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

**Water activity**—A measure of the free moisture in a food. The term is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol AW (aw).

**§ 76.3. Requirements for food establishments.**

(a) *Industry-specific categories of food establishments.* A food establishment that is not exempt from compliance under § 76.1(d) (relating to compliance) shall be classified under one or more of the following industry-specific categories:

(1) Food processor that manufactures potentially hazardous foods.

(2) Food service that prepares and serves potentially hazardous foods to the consumer.

(3) Bakery that processes potentially hazardous foods.

(4) Retail food store that offers potentially hazardous food to the consumer.

(5) Frozen dessert manufacturer.

(b) *Certified supervisory employe.* A food establishment shall employ or designate at least one certified supervisory employe who is certified with respect to the industry-specific category of the food establishment.

(c) *New food establishment.* A new food establishment shall bring itself into compliance with subsection (b) within 90 days of the date it commences operation.

(d) *Employe turnover.* If a food establishment loses its only certified supervisory employe through employe turnover or for any other reason, the food establishment shall bring itself into compliance with subsection (b) within 3 months of the date it lost its previous certified supervisory employe.

(e) *Certification records.* A food establishment shall maintain the following information at the food establishment site:

(1) The name of each certified supervisory employe in its employe.

(2) The name of each certified supervisory employe who has been in its employe in the past year.

(3) The certificate number of each certified supervisory employe referenced in paragraphs (1) and (2).

(4) The industry-specific category of food establishment with respect to which a certified supervisory employe referenced in paragraphs (1) and (2) was certified.

(5) The issuance and expiration dates of the certificate of any certified supervisory employe referenced in paragraphs (1) and (2).

(6) The date it lost any certified supervisory employe within the past year—whether through employe turnover or other change in status.

(f) *Availability of records.* Upon request by the Department, a food establishment shall make the records described in subsection (e) available for inspection by the Department during reasonable hours.

(g) *Posting of certificate.* A food establishment shall post the original certificate of its certified supervisory employe in public view at its business location.

(h) *Return of certificate.* A certificate is the property of the Department and is issued to the individual person identified on its face.

**§ 76.4. Eligibility to apply for certification.**

A person shall complete an approved certification program and obtain a score of 70% or higher on an approved certification examination to be eligible to apply to the Department for certification.

**§ 76.5. Certification programs: obtaining the Department's approval.**

(a) *Approval required.* A person shall obtain the Department's approval of a training program before the training program will be considered an approved certification program for purposes of the act and this chapter. Revisions or changes to a previously-approved certifica-

tion program shall also be approved by the Department. Approval under this section authorizes a person to develop and approve certification examinations, conduct certification examinations and certify the results of certification examinations to the Department in accordance with this chapter.

(b) *General requirements for approval.* The Department will approve a certification program if it addresses an industry-specific category of food establishment described in § 76.3(a) (relating to requirements for food establishments), meets the food safety protection and training standards described in § 76.7 (relating to certification programs: food safety protection and training standards) and has been recommended for approval by the Advisory Board.

(c) *Obtaining an application form.* The Department will provide an application form for certification program approval, or an application form for approval of revisions or changes to a previously-approved certification program, upon request. Requests for these forms shall be directed to the Department at the address in § 76.16 (relating to contacting the Department).

(d) *Contents: application for certification program approval.* The application form for certification program approval shall require the following information:

- (1) The applicant's name, address and telephone number.
- (2) A course syllabus demonstrating that the program would meet the minimum content requirements in § 76.7 (relating to certification programs: food safety protection and training standards).
- (3) The industry-specific category of food establishment, as described in § 76.3(a) (relating to requirements for food establishments), to be addressed by the certification program.
- (4) A copy of the examination to be administered at the conclusion of the certification program, together with an answer key for that examination, if these documents are available.
- (5) A copy of all teacher materials for the certification program, unless the certification program is a home-study program.
- (6) A copy of all materials to be distributed to persons taking the program.
- (7) The proposed sites and dates of the certification program, if known, unless the certification program is a home-study program.
- (8) If the certification program is a home study program, the proposed site and date the approved certification examination is to be administered.
- (9) Other information the Department might reasonably require.

(e) *Contents: application for approval of changes or revisions to a previously-approved certification program.* The application form for approval of changes or revisions to a previously-approved certification program shall require the applicant's name, address and telephone number and only information listed in subsection (d) that is relevant to the change or revision with respect to which approval is sought.

(f) *Deadline for filing the application.* An application for certification program approval or for approval of changes or revisions to a previously-approved certification program shall be delivered to the Department, at the

address in § 76.16 (relating to contacting the Department), at least 90 days in advance of the proposed date upon which the program is to be conducted.

(g) *Departmental and Advisory Board action on application.* The Advisory Board will consider whether to recommend Departmental approval of a certification program. If the majority of a quorum of the Advisory Board recommends Departmental approval of a certification program, the Department will grant its approval, if the other criteria in subsection (b) are met. The Department will mail the applicant its written approval of the certification program, its denial of approval or a request for additional clarification or documentation.

§ 76.6. Certification programs: audit by Department.

The Department may attend and audit an approved certification program to ascertain whether the program is conducted in accordance with the requirements of the act and in conformity to the program syllabus. A person offering or conducting an approved certification program shall allow the Department's auditors entry to the program and provide copies of course materials.

§ 76.7. Certification programs: food safety protection and training standards.

(a) *Overview of topics.* As described in detail in subsections (b)–(h), a training program shall contain instruction in the following topics:

- (1) Foodborne illness
  - (2) Time and temperature
  - (3) Relationship between personal hygiene and food safety
  - (4) Food safety tracking system
  - (5) Cleaning and sanitizing
  - (6) Facilities and equipment layout
  - (7) Statutory and regulatory requirements
- (b) *Topic: foodborne illness.* A portion of the instruction in a training program shall pertain to the topic of foodborne illness. This instruction shall address the following:
- (1) Terms and definitions necessary to an understanding of foodborne illness. At a minimum, this shall include the following terms:
    - (i) Bacteria.
    - (ii) Communicable disease.
    - (iii) Confirmed disease outbreak.
    - (iv) Fungi.
    - (v) Potentially hazardous foods.
    - (vi) Infection.
    - (vii) Intoxication.
    - (viii) Parasite.
    - (ix) Pathogenic organism.
    - (x) Time and temperature.
    - (xi) Virus.

(2) Microorganisms that commonly cause foodborne infection or intoxication.

(3) The process by which microorganisms cause foodborne illness.

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(4) The definition, characteristics and recognition of potentially hazardous foods.

(5) Factors that contribute to foodborne illness.

(6) Prevention of food contamination from employes, equipment, premises, utensils and consumers.

(7) Prevention of food contamination from chemicals.

(c) *Topic: time and temperature.* A portion of the instruction in a training program shall pertain to the topic of time and temperature. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of time and temperature requirements. At a minimum this shall include the following terms:

- (i) Bacteria growth.
- (ii) Contamination.
- (iii) Critical control point.
- (iv) Critical item.
- (v) Cross-contamination.
- (vi) Food contact surface.
- (vii) Hermetically sealed container.
- (viii) Lag phase.
- (ix) Log phase.
- (x) Ready-to-eat foods.
- (xi) Reduced oxygen packing.
- (xii) Slacking.
- (xiii) Temperature danger zones.
- (xiv) Water activity.
- (xv) Emerging pathogens.

(2) Prime factors which control the growth, survival and toxin production rate of pathogenic microorganisms in food during receiving, storing, cooking, thawing, cooling, preparation, holding/displaying, serving, freezing, transporting, reheating and storing after production.

(3) The types, uses and calibration of food thermometers.

(4) Proper food temperatures during refrigeration, freezing, cooling, hot holding, cooking, reheating, thawing and preparation.

(d) *Topic: relationship between personal hygiene and food safety.* A portion of the instruction in a training program shall pertain to the topic of the relationship between personal hygiene and food safety. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of the relationship between personal hygiene and food safety. At a minimum this shall include the following terms:

- (i) Asymptomatic.
- (ii) *Escherichia coli*.
- (iii) Hepatitis A infection.
- (iv) Highly susceptible group.
- (v) Pathogenic organism.
- (vi) *Salmonella enteritidis*.
- (vii) *Staphylococcus*.
- (viii) Transmissible.

(2) Prevention of food contamination by food establishment employe, including the following subjects:

- (i) Handwashing techniques and frequency.
- (ii) Relationship of hand contact to foodborne illness.
- (iii) Contamination by poor hygienic practices such as sneezing, coughing and scratching.
- (iv) Clothing.
- (v) Fingernails.
- (vi) Eating, drinking or using tobacco.
- (vii) Hair restraint.
- (viii) Animals in the workplace.

(3) Employe health, including the following subjects:

- (i) Infections or diseases which can be transmitted by open wound, sinus infection, virus or sore throat.
- (ii) Identifying employes who may transmit infection or disease.
- (iii) High risk groups.
- (iv) Imposition and removal of employe exclusions and restrictions.
- (v) Mandatory and voluntary reporting of foodborne illness.

(4) Preventive measures such as training, written cleaning and sanitation schedules and procedures, self-inspection, integrated pest management and preventative maintenance.

(e) *Topic: food safety tracking system.* A portion of the instruction in a training program shall pertain to the topic of food safety tracking systems. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of a food safety tracking system. At a minimum this shall contain the following terms.

- (i) Adulteration.
- (ii) Contamination.
- (iii) Critical control point.
- (iv) Cross-contamination.
- (v) HACCP or Hazardous Analysis Critical Control Point.
- (vi) Product protection.

(2) Receiving food, including the following subjects:

- (i) Approved sources.
- (ii) Condition of food.
- (iii) Thermometers and temperature checks.
- (iv) Rejection for adulteration, temperature violations, distressed merchandise or condition of carrier.

(3) Safe storage of food, including the following subjects:

- (i) Dry storage temperature and practices.
- (ii) Refrigeration and freezing holding temperatures and product protection.
- (iii) Shelf life.
- (iv) Cross-contamination and adulteration.
- (v) Product protection in retail service/display areas and storage areas.
- (vi) Product labeling.

- (vii) Labeling of poisonous or toxic materials.
- (viii) Original containers.
- (ix) Working containers.
- (x) Food storage prohibitions, including locker rooms, toilet rooms, garbage rooms and under sewer lines.
- (4) Preparation and processing of food, including the following subjects:
  - (i) Personal hygiene.
  - (ii) Practices regarding disposable gloves.
  - (iii) Contamination by chemical or physical additives.
  - (iv) Cross-contamination.
  - (v) Equipment/utensils.
  - (vi) Hazards to humans in using equipment.
  - (vii) Machine guards, slicer blades and protective light shields.
  - (viii) Corrective actions.
  - (ix) Potentially hazardous foods.
  - (x) HACCP.
  - (xi) Critical control point.
- (f) *Topic: cleaning and sanitizing.* A portion of the instruction in a training program shall pertain to the topic of cleaning and sanitizing. This instruction shall address the following:
  - (1) Terms and definitions necessary to an understanding of cleaning and sanitizing procedures. At a minimum this shall contain the following terms:
    - (i) Adulteration.
    - (ii) Air dry.
    - (iii) Bleach.
    - (iv) CIP.
    - (v) Cleaning.
    - (vi) Contamination.
    - (vii) Cross-contamination.
    - (viii) Detergent.
    - (ix) Easily cleanable.
    - (x) Food contact surface.
    - (xi) Nonfood contact surface.
    - (xii) pH.
    - (xiii) ppm.
    - (xiv) Sanitization.
    - (xv) Test strips.
    - (xvi) Warewashing.
    - (xvii) Quaternary ammonium compound.
  - (2) MSDS Fact sheets.
  - (3) Proper use of hot water or chemicals in sanitizing.
  - (4) The difference between cleaning and sanitizing.
  - (5) Types of sanitizers, their usage and the use of test strips.
  - (6) Detergents.
  - (7) Procedures to wash-rinse-sanitize.
  - (8) The frequency with which food contact surfaces, utensils, equipment and nonfood contact surfaces should be sanitized.

- (9) Equipment.
- (10) Manual warewashing.
- (11) Mechanical warewashing.
- (12) The proper use of cleaning methods such as air drying, wiping cloths, CIP and water temperature.
- (g) *Topic: facilities and equipment layout.* A portion of the instruction in a training program shall pertain to the topic of facilities and equipment layout. This instruction shall address the following:
  - (1) Terms and definitions necessary to an understanding of the proper layout of equipment and facilities. At a minimum this shall contain the following terms:
    - (i) Air gap.
    - (ii) Backflow device.
    - (iii) Cleanability.
    - (iv) Potable water.
    - (v) Handwash sink.
    - (vi) Plan review.
  - (2) Proper equipment design and location.
  - (3) Construction of floors, walls and ceilings.
  - (4) Design of equipment such as refrigeration, hot holding, heating, ventilation, pest control, lighting and freezer equipment and design of the buildings in which the equipment is located.
  - (5) Acceptable water sources, water quality and quantity and water distribution systems.
  - (6) Plumbing design, construction, location, materials and operation.
  - (7) Management of solid and liquid waste, recyclables, refuse and returnable.
  - (8) Review of plans for equipment and building lay-out and design.

(h) *Topic: statutory and regulatory requirements.* A portion of the instruction in a training program shall pertain to the topic of statutory and regulatory requirements. This instruction shall address the following:

- (1) Terms and definitions necessary to an understanding of the requirements imposed by the act and this chapter. At a minimum this shall contain the following:
  - (i) The act.
  - (ii) The certificate.
  - (iii) The certified supervisory employee.
- (2) Statutes and regulations relevant to the industry-specific category of food establishment that is the subject of the approved certification program.

#### § 76.8. Format of a certification examination.

Although it is recommended that a certification examination consist of no fewer than 100 questions, under no circumstances may a certification examination consist of fewer than 80 questions. These questions shall be multiple choice questions, true or false questions or a combination thereof that adequately test food protection knowledge with respect to an industry-specific category of food establishment described in § 76.3(a) (relating to requirements for food establishments).

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**§ 76.9. Reporting results of a certification examination.**

A person who proctors a certification examination shall, within 20 days of proctoring the examination, mail or deliver to any person who took the examination written confirmation of that person's examination score, the date and location of the examination and the industry-specific category of food establishment addressed in the examination. The examination score shall be expressed as the percentage of correct answers. Within that same 20-day time period the proctor shall mail the same information to the Department at the address in § 76.16 (relating to contacting the Department), using a form provided by the Department upon request.

**§ 76.10. Applying for certification.**

(a) *Application required.* A person who has attained a score of 70% or higher on a certification examination may apply to the Department for certification. Certification is granted through issuance of the certificate described in § 76.11 (relating to certificate).

(b) *Form of application.* A person seeking certification under the act may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The application form shall require the following information:

- (1) The name and mailing address of the person seeking certification.
- (2) The location and dates of any approved certification program completed by the person seeking certification.
- (3) The location and date of the certification examination.
- (4) The industry-specific food establishment category (as described at § 76.3(a) (relating to requirement for food establishments)) with respect to which certification is sought.
- (5) Other information the Department might reasonably require.

(c) *Application fee.* A person applying for certification under this section shall pay an application fee of \$20, by check or money order made payable to the "Pa. Department of Agriculture." This payment shall accompany the application.

(d) *Department action on application.* The Department will, within 20 days of receiving an application and the application fee, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation.

**§ 76.11. Certificate.**

(a) *Contents of certificate.* A certificate will bear the following information:

- (1) The name of the person to whom it is issued.
- (2) The industry-specific category of food establishment category, as described in § 76.3(a) (relating to requirement for food establishment), with respect to which the person is certified.
- (3) The date upon which the certificate was issued.
- (4) The expiration date of the certificate, which shall be 5 years from the date of issuance.
- (5) A unique identification number.
- (6) A statement that the Department has determined the person identified on the certificate to possess ad-

equate food protection knowledge and to be a certificateholder with respect to the industry-specific category of food establishment designated on the certificate.

(7) Other information the Department might reasonably include.

(b) *Ownership of certificate.* A certificate issued by the Department will remain the property of the Department. A certificateholder, certified supervisory employe, food establishment or other person having physical possession of a certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

(c) *Obligation to allow display.* A certified supervisory employe shall allow his employer to display the certificate issued by the Department, as required in § 76.3(g). Upon termination of a certified supervisory employe's employment, the employer shall surrender the certificate to the certificateholder named on the certificate.

**§ 76.12. Renewal of certification.**

(a) *General requirement.* A certificateholder shall obtain at least 7.5 hours of approved continuing education in the area of food safety and sanitation every 5 years, commencing with the date the certificate is issued. An approved continuing education course will not require a written examination as a condition of completion. If a certificateholder fails to obtain this approved continuing education and deliver a complete certification renewal application to the Department prior to the expiration date of the certificate, the certificate shall expire and the certificateholder shall successfully complete an approved certification program and a certification examination before certification will be granted.

(b) *Application for renewal.* A person seeking renewal of certification under this section may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The form shall require the following information:

- (1) The name and mailing address of the applicant.
- (2) Copies of course descriptions, course-completion certificates, college course transcripts and descriptions and similar documentation to evidence compliance with the requirement in subsection (a).
- (3) The industry-specific food establishment category, as described in § 76.3(a), with respect to which the applicant is certified.
- (4) The identification number and expiration date of the certificate.
- (5) Other information the Department might reasonably require.

(c) *Departmental action on application.* The Department will, within 30 days of receiving an application, mail the applicant a certificate (as described in § 76.11(a) (relating to certificate)), its denial of renewal of certification or a request for additional clarification or documentation.

**§ 76.13. Obtaining Departmental approval of a continuing education course.**

(a) *Approval required.* A person shall obtain the Department's approval of a continuing education course before the course will be considered an approved continuing education course for purposes of § 76.12 (relating to renewal of certification). Revisions or changes to a



previously-approved continuing education course shall also be approved by the Department.

(b) *General requirements for approval.* The Department will approve a continuing education course if it instructs participants in current food protection practices and has been recommended for approval by the Advisory Board.

(c) *Application for approval.* A person seeking the Department's approval of a continuing education course under this section may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The form shall require the following information:

- (1) The name and mailing address of the applicant.
- (2) A course syllabus demonstrating that the course addresses regulatory or food industry changes, updates or advancements.
- (3) A copy of teaching materials for the course.
- (4) A copy of materials to be distributed to persons taking the course.
- (5) The proposed sites and dates of the course.
- (6) Other information the Department might reasonably require.

(d) *Departmental and Advisory Board action on application.* The Advisory Board will consider whether to recommend Departmental approval of the continuing education course. If the majority of a quorum of the Advisory Board recommends Departmental approval of a continuing education course, the Department will grant its approval, if the other requirements of subsection (b) are met. The Department will mail the applicant its written approval of the continuing education course, its denial of approval or a request for additional clarification or documentation.

#### § 76.14. Reciprocity with other states.

The Department may accept certification issued to a person by another state if both of the following occur:

- (1) The other state has requirements for certification that are comparable to those imposed by the act.
- (2) The Department and the other state jurisdiction have entered into a reciprocal agreement to accept each state's certification program as meeting the requirements of the act.

#### § 76.15. Suspension or revocation of certification.

(a) *Basis for action.* The Department may suspend or revoke the certification of a certificateholder if that person does one or more of the following:

- (1) Violates a provision of this chapter.
- (2) Violates another sanitation regulation.
- (3) Violates the Public Eating and Drinking Place Law or its attendant regulations.
- (4) Violates the Food Act or its attendant regulations.

(b) *Notice.* The Department will provide a certificateholder with written notice of its intention to suspend or revoke certification, which will afford that person notice and opportunity for an administrative hearing before the Department prior to the effective date of the suspension or revocation.

(c) *Delivery of notice.* The Department will deliver the notice described in subsection (b) to the affected certificateholder by personal service or by regular mail to

the address provided by the certificateholder on his application for certificate under § 76.10 (relating to applying for certification).

#### § 76.16. Contacting the Department.

A person seeking applications or information relating to the act or this chapter shall forward his request, in writing, to the following address:

ATTN: Food Employee Certification  
Department of Agriculture  
Bureau of Food Safety and Laboratory Services  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

#### § 76.17. Preemption and local governmental authority.

(a) *General.* The regulation of food safety protection and training standards for employes of food establishments is preempted by the Department except that, in accordance with section 6503(f) of the act (relating to certification advisory board and programs), any food employe certification program established by a county, city, borough or incorporated town or township prior to September 1, 1994, may remain in effect.

(b) *Limitation of local certification.* If a county, city, borough, incorporated town or township elects to operate a food employe certification program that was in existence prior to September 1, 1994, the certification of persons under that local program shall be valid only within the geographic boundaries of that local government unit. This program validity may be extended to other states or local government units through reciprocal agreements among other states or local government units which operate food employe certification programs that predate September 1, 1994.

(c) *Option of certain local government units.* A county, city, borough, incorporated town or township having a food employe certification program which was in effect prior to September 1, 1994, may, at its option, apply to the Department in accordance with the procedure in § 76.5 (relating to approved certification programs: obtaining the Department's approval) to become an approved certification program with respect to one or more industry-specific categories of food establishments.

(d) *Effect of a local government unit's decision with respect to exercising option.* If a county, city, borough, incorporated town or township having a food employe certification program which was in effect prior to September 1, 1994, does not exercise the option described in subsection (c) or does not obtain Departmental approval of its certification program with respect to any particular industry-specific category of food establishment, the unit of local government shall retain exclusive responsibility for certification of the food employes who would otherwise fall into that industry-specific category.

#### § 76.18. Advisory Board.

(a) *Purpose.* The Advisory Board shall review and recommend Departmental approval of industry-specific certification programs which meet the requirements of the act and this chapter.

(b) *Composition.* The Advisory Board will be appointed by the Secretary and consist of at least 21 members. The membership of the Advisory Board will be as follows:

- (1) The Secretary, or a designee, who will serve as chairperson.
- (2) The Chairperson of the Agriculture and Rural Affairs Committee of the Senate, or a designee.

(3) The Chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, or a designee.

(4) The Minority Chairperson of the Agriculture and Rural Affairs Committee of the Senate, or a designee.

(5) The Minority Chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, or a designee.

(6) A consumer representative.

(7) Two representatives of production agriculture.

(8) At least one person recommended by each of the following:

- (i) Pennsylvania Association of Milk Dealers.
- (ii) Pennsylvania Restaurant Association.
- (iii) Pennsylvania Food Merchants Association.
- (iv) Pennsylvania Convenience Store Council.
- (v) Pennsylvania Bakers Association.
- (vi) Pennsylvania Food Processors Association.
- (vii) Pennsylvania Veterinary Medical Association.
- (viii) County Commissioners Association of Pennsylvania.
- (ix) Pennsylvania League of Cities and Municipalities.
- (x) Pennsylvania State Association of Boroughs.
- (xi) Pennsylvania State Association of Township Commissioners.
- (xii) Pennsylvania State Association of Township Supervisors.
- (xiii) Pennsylvania School Food Service Association.

(9) At least one of the Advisory Board members described in paragraph (8) shall have experience in the field of public health.

(c) *Terms of appointees.* Advisory Board members described in subsection (b)(1), (2), (3), (4) or (5) shall be ex officio members. The terms of the initial appointees of the Secretary under subsection (b)(6)—(8) will be 2, 3 or 4 years, as determined by the Secretary, and will be staggered so that the terms of approximately 1/3 of these initial appointees expire in each of the 2nd, 3rd and 4th years of the Advisory Board's existence. Thereafter, the term of each of these appointees shall be 3 years. The term of a person appointed to replace another member whose term has not expired shall be only the unexpired portion of that term. Persons may be appointed to successive terms.

**§ 76.19. Civil penalties.**

(a) *General.* The Department may assess a civil penalty of up to \$300 against any person or food establishment that violates any provision of the act or this chapter for the first offense. The Department may assess a penalty of up to \$1,000 for each subsequent offense.

(b) *Notice.* The Department will provide a person or food establishment written notice of any violation of the act or this chapter and an opportunity for an administrative hearing on the violation prior to the imposition of a civil penalty.

(c) *Time for correction of condition giving rise to civil penalty.* If the Department assesses a civil penalty against a food establishment for failing to have the required certified supervisory employe, it will allow the food establishment a period of 90 days from the violation

giving rise to the initial civil penalty before it may assess another civil penalty. During that 90-day period, the food establishment shall bring itself into compliance with the act and this chapter.

[Pa.B. Doc. No. 97-977. Filed for public inspection June 20, 1997, 9:00 a.m.]

## STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

### Volunteer License

The State Board of Medicine (Board) proposes to amend § 16.11 (relating to licenses, certificates and registrations) and add § 16.18 (relating to volunteer license) to read as set forth in Annex A.

#### A. Effective Date

The proposed amendments will be effective upon publication of final-form regulations in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

The Board is required to promulgate regulations governing the volunteer license category by section 5 of the Volunteer Health Services Act (act) (35 P. S. § 449.5) which became effective February 3, 1997. Section 5 of the act mandates regulations governing: (1) qualifications for placing an active license on volunteer status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is authorized to adopt regulations necessary to the administration of its enabling statute under section 8 of the Medical Practice Act of 1985 (63 P. S. § 422.8).

#### C. Background and Purpose

The purpose of the proposal is to implement the act. The act is intended to increase the availability of primary health services by establishing a procedure for physicians and other health care practitioners who have retired from active practice to provide professional services as volunteers in approved clinics. Primary health services are defined in the act as including services such as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing, and health education.

An approved clinic is defined in the act as an organized community-based clinic which offers services to: (1) individuals and families who cannot pay for their care; (2) Medical Assistance clients; or (3) residents of medically underserved or health professionals shortage areas. Examples of these clinics include Federal or State qualified and approved health centers or nonprofit community based clinics.

The act permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for volunteer status. A volunteer license will be issued to a retired individual who documents to the satisfaction of the Board that the individual will practice without remuneration in approved clinics.





COMMONWEALTH OF PENNSYLVANIA  
**DEPARTMENT OF AGRICULTURE**  
LEGAL OFFICE

July 19, 1999

Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17120

**Re: FINAL-FORM REGULATION**  
**Department of Agriculture**  
**7 Pa. Code Chapter 76**  
**Bureau of Food Safety and Laboratory Services**  
**Food Employee Certification**  
**I.D. No. 2-107**  
**Proposed Rulemaking: 27 Pennsylvania Bulletin 2936 (June 21, 1997)**  
**Final-Form Regulation Approved by Office of General Counsel: July 14, 1999**

Dear Sirs:

Please find enclosed a copy of the above-referenced final-form regulation. This material includes copies of the Preamble and Annex "A". A copy of the proposed regulation, as it appeared in the above-referenced edition of the *Pennsylvania Bulletin*, is also enclosed.

I respectfully request the Independent Regulatory Review Commission review and approve the above-referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

This Department's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to applicable Legislative Committees (the House and Senate Committees for Agriculture and Rural Affairs), and have been mailed or delivered to each commentator on this date.

The Department will provide you with any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight-Jared Smith".

Dwight-Jared Smith  
Assistant Counsel

Enclosures

cc: Martha Melton, w/o encl.

2301 NORTH CAMERON STREET  
HARRISBURG, PA 17110-9408  
717-787-8744  
FAX 717-787-1270

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 2-107  
 SUBJECT: Food Employee Certification  
 AGENCY: DEPARTMENT OF Agriculture

99 JUL 19 PM 3:31

REGULATORY REVIEW COMMISSION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
7/19/99	<i>A. Bessant</i>	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
7/19/99	<i>Melissa Leterme</i>	
7/19/99	<i>T. Casella</i>	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
7/19/99	<i>Nadine Bailey</i>	
7/19/99	<i>Lin Clark</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

July 14, 1999