

Regulatory Analysis Form

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(1) Agency

Pennsylvania Department of Agriculture
Bureau of Food Safety and Laboratory
Services

(2) I.D. Number (Governor's Office Use)

2-107

IRRC Number:

1858

(3) Short Title

Food Employee Certification

(4) PA Code Cite

7 Pa. Code Chapter ⁷⁶ ~~83~~

(5) Agency Contacts & Telephone Numbers

Primary Contact: LeRoy Corbin, Director
717-787-4315

Secondary Contact: Martha M. Melton
717-782-8354

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 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. Sections 6501-6510) ("Act") will require most food establishments in the Commonwealth to have at least one "supervisory employee" who has undergone food safety training and passed a written examination evidencing food safety knowledge. This requirement will not become mandatory until July 1, 2001. The Act requires the Department establish food safety protection and training standards necessary to establish this certification procedure.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Food Employee Certification Act (P.L. 903, No 131)
(3 Pa. C.S. Sections 6501-6510) is the statutory authority for
this regulation.

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(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 will provide for the education of food employees handling foods which have the potential to cause foodborne illness if proper handling, sanitation and safety procedures are not followed. The education of the designated supervisory employees will help to minimize foodborne illness.

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

Non-regulation is likely to result in continued cases of foodborne illness caused by the 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 through food safety and sanitation education. They will produce a safer and higher quality product through education. The consumer will benefit by being able to purchase a safer product. Food products will have less potential to make consumers ill due to poor food safety and sanitation practices.

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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.)

There will be no one 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 this 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 per food establishment handling potentially hazardous food shall be required to comply. Approximately 35,000 people will be required to comply. Again, this requirement is imposed by the Act, and not this 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 following persons received earlier drafts of this regulation and were provided the opportunity to comment: Food Employee Certification Advisory Board; Wolf Associates; PA Food Processors Association; PA Food Merchants Association; Eastern Regional Emu Chapter of The American Emu Association; PA Association of Milk Dealers; PA Farm Bureau; PA Restaurant Association; Allegheny County Food Protection Program; Chester County Bureau of Environmental Health Protection; Bucks County Bureau of Environmental Health Services; Bethlehem Bureau of Health; Allentown Environmental Health Services; Montgomery County Environmental Health Services; Erie County Environmental Health.

(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 supervisory employees is \$20.00 (see 3 Pa. C.S. Sec. 6509(b)). The Act, therefore, requires an expenditure by industry of at least \$700,000. Food establishments should benefit from a reduction in legal claims related to foodborne illness as a result of this 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.

None.

(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.

Until 2001, the Department expects voluntary compliance by food establishments to increase on an even pace. The costs to the Department are set forth at Answer No. 20.

Regulatory Analysis Form.

(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.

	96-97	97-98	98-99	99-00	00-01	01-02
* = not estimable	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	*	*	*	*	*
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	*	*	*	*	*
COSTS:						
Regulated Community	0	*	*	*	\$700,000	*
Local Government	0	0	0	0	0	0
State Government	0	\$5,000	\$10,000	\$15,000	\$30,000	\$30,000
Total Costs	0	\$5,000+	\$10,000+	\$15,000+	\$730,000	\$30,000
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

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

COSTS: Compliance is not mandatory until July 1, 2001. By that date, industry will have spent approximately \$700,000 on certification fees (35,000 food establishments x \$20 fee). Prior to that date, it is expected many food establishments will voluntarily comply. The chart assumes a greater rate of voluntary compliance as July 1, 2001 approaches. The cost of training supervisory employees is not readily measureable.

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(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.

There are no adverse effects that will result from this regulation. Industry will incur a \$20.00 - per-certified individual fee, and there will be at least 35,000 certified individuals. In addition, industry and individuals will bear the costs of training. These costs are expected to be offset by a decrease in legal claims relating to foodborne illness and a bolstering of confidence in the food service industry. The regulation will also benefit public health.

(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. Sections 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.

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(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.

The Federal government currently does not have standards that require the certification of specific food establishment personnel. The President is pushing for more stringent regulations concerning food safety due to recent foodborne disease outbreaks. Increased consumer awareness would also warrant stronger regulation.

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

The majority of the states do not have a food employee certification program. Currently eight states plus the District of Columbia have food employee certification regulations. The Food Employee Certification Act provides for reciprocity with other states. The regulation does not place Pennsylvania 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 other state agencies would be affected by the regulation.

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

No. The Department has already circulated drafts of this regulation among the groups listed herein under Answer No. 16, and has considered comments from these groups in development of regulation. Against this backdrop, the Department is satisfied the review and comment provisions of the Regulatory Review Act will provide interested persons adequate opportunity to participate in the development of this regulation.

Regulatory Analysis Form

(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 the names and certificate numbers of the certified personnel at their places of business. Standard forms will be available from the Department for the issuance of a certification documents, new or revised training program approvals, and credits for recertification.

(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 this regulation to be effective at the earliest date consistent with the Regulatory Review Act, the Food Employee Certification Act requires that compliance be optional until July 1, 2001.

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

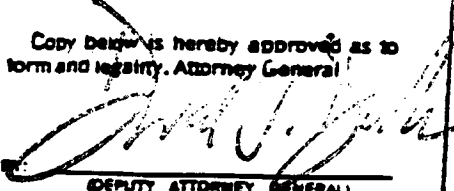
The efficacy of this regulation will be considered at least annually - as the Department's Bureau of Food Safety and Laboratory Services reviews its regulations.

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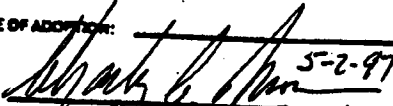
Department of Agriculture

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 2-107

DATE OF ADOPTION:

BY:



Charles C. Brosius
Secretary of Agriculture

TITLE:

EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY

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5/7/97

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

Check if applicable
Copy not approved. Objections
attached.

PROPOSED RULEMAKING
Bureau of Food Safety and Laboratory Services
7 Pa. Code Chapter 83
Food Employee Certification

**DEPARTMENT OF AGRICULTURE
TITLE 7 - AGRICULTURE
(7 Pa. Code Chapter 83)
Food Employee Certification**

The Department of Agriculture ("Department"), Bureau of Food Safety and Laboratory Services, proposes to establish regulations relating to food employee certification at Chapter 83.

This regulation is proposed under authority of §§ 3(d) and 5 of the Food Employee Certification Act ("Act")(3 Pa.C.S. §§ 6503(d) and 6505) 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 the 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 the 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 regulation 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 this regulation 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 regulation follows:

A food establishment need not comply with the requirements of the Act until July 1, 2001. Proposed § 83.1 (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 § 83.2 (relating to definitions) contains definitions from the Act and the FDA Food Code. Where 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 at proposed § 83.7 (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 regulation, the Department believes it important to be as specific as possible with respect to the required topics of instruction in a certification program.

Proposed § 83.3 (relating to requirements for food establishments) accomplishes several purposes: It delineates the industry-specific categories of food establishments required under the Act (at 3 Pa.C.S. § 6503(d)). It restates the major premise of the Act - that a food establishment must employ or designate at least one supervisory employee who is certified under the Act with respect to the appropriate industry-specific category of the food establishment. It also sets forth the basic record keeping requirements for food establishments, pursuant to which the Department can monitor compliance with the Act.

Although proposed § 83.4 (relating to eligibility to apply for certification) essentially restates the requirements of the Act as set forth at 3 Pa.C.S. § 6504(b), 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 § 83.5 (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 § 83.7 (relating to certification programs: food safety protection and training standards) details the minimum content requirements of a certification program.

Proposed § 83.8 (relating to format of a certification examination) requires 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 § 83.9 (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 § 83.10 (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 § 83.11 (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 employee.

The Act requires a certificate be renewed at 5 year intervals, imposes a continuing education requirement on certificate holders and requires the Department approve continuing education courses. These provisions appear at 3 Pa.C.S. § 6504(f). Proposed §§ 83.12 (relating to renewal of certification) and 83.13 (relating to obtaining departmental approval of a continuing education course) set forth recertification requirements and procedures and the procedure for approval of continuing education programs.

Proposed § 83.14 (relating to reciprocity with other states) essentially restates the reciprocity provisions of the Act (at 3 Pa.C.S. § 6507).

Proposed § 83.15 (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 be afforded persons facing suspension or revocation.

Proposed § 83.17 (relating to preemption and local

governmental authority) clarifies that local government food employee certification programs that predate September 1, 1994 may remain in effect and that a local government unit having such 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 § 83.19 (relating to civil penalties) repeats the penalty provisions set forth in the Act (at 3 Pa.C.S. § 6508), but clarifies that the Department will afford a food establishment that is assessed a penalty for not having a certified supervisory employee 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 regulation 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 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 proposed regulation would impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

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

General Public

The proposed regulation 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 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 the Department issue certificates to supervisory employees 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 regulation, however, does not impose paperwork requirements beyond those imposed by the Act itself.

Regulatory Review

The Department submitted a copy of the proposed regulation to the Independent Regulatory Review Commission and to the chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on _____, in accordance with Section 5(a) of the Regulatory Review Act (71 P.S. Section 745.5(a)). The Department also provided the Commission 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 the Commission has an objection to any portion of the proposed regulation, it must so notify the Department within 30 days after 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 regulation.

Contact Person

All interested persons are invited to submit written comments regarding the proposed regulation 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 regulation will become effective upon final adoption.

By the Department of Agriculture

Charles C. Brosius, Secretary

ANNEX "A"

Title 7. AGRICULTURE

CHAPTER 83. FOOD EMPLOYEE CERTIFICATION

<u>Sec.</u>	<u>Title</u>
83.1.	Compliance.
83.2.	Definitions.
83.3.	Requirements for food establishments.
83.4.	Eligibility to apply for certification.
83.5.	Certification programs: Obtaining the Department's approval.
83.6.	Certification programs: Audit by Department.
83.7.	Certification programs: Food safety protection and training standards.
83.8.	Format of a certification examination.
83.9.	Reporting results of a certification examination.
83.10.	Applying for certification.
83.11.	Certificate.
83.12.	Renewal of certification.
83.13.	Obtaining Departmental approval of a continuing education course.
83.14.	Reciprocity with other states.
83.15.	Suspension or revocation of certification.
83.16.	Contacting the Department.
83.17.	Preemption and local governmental authority.
83.18.	Advisory Board.
83.19.	Civil penalties.

§ 83.1. 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 is 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 any 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.

§ 83.2. 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 any subsequent amendment thereof:

Act - The Food Employee Certification Act (Act of December 12, 1994, P.L. 903, No. 131)(3 Pa.C.S. §§

6501-6510).

Adulterated Food - Food that is considered adulterated under § 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, etc...) 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 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 § 3(d) of the Act (3 Pa. C.S. § 6503(d)) 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 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 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 -

(a) A characteristic of a surface that:

- (i) Allows effective removal of soil by normal cleaning methods;
- (ii) Is dependent on the material, design, construction, and installation of the surface; and
- (iii) 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.

(b) The term includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in subparagraph (a) of this definition to different situations in which varying

degrees of cleanability are required such as:

- (i) 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; or
- (ii) 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.

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 act of July 1, 1994 (P.L. 421, No. 70) (31 P.S. §§ 20.1-20.18).

Food-contact surface -

- (a) A surface of equipment or a utensil with which food normally comes into contact; or
- (b) A surface of equipment or a utensil from which food may drain, drip, or splash:
 - (i) Into a food, or
 - (ii) 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 USDA 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 -

(a) An incident, except as specified in subparagraph (b) of this definition, in which:

(i) Two or more persons experience a similar illness after ingestion of a common food; and

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

(b) The term includes a single case of illness such as 1 person ill from botulism or chemical poisoning.

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 (act of September 1, 1965, P.L. 420)(31 P.S. §§ 417-1 - 417.14), as amended.

Fungi - A division of lower plant life.

H.A.C.C.P. or 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 § 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 set forth in § 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 et seq.).

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

Ready-to-Eat food -

(a) Food that is in a form 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.

(b) The term includes:

- (i) Unpacked 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;
- (ii) Raw, washed, cut fruits and vegetables;
- (iii) Whole, raw, fruits and vegetables that are

presented for consumption without the need for further washing, such as at a buffet; and
(iv) 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 -

(a) 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.

(b) 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 of Agriculture of the Commonwealth.

Slacking - The process of moderating the temperature of a 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.

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, 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).

§ 83.3. Requirements for food establishments.

(a) **Industry-specific categories of food establishments.** A food establishment that is not exempt from compliance under § 83.1(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 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.

(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) **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 with subsection (b) within three months of the date it lost its previous certified supervisory employee.

(e) **Certification records.** A food establishment shall maintain 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 at paragraphs (1) and (2).

- (4) The industry-specific category of food establishment with respect to which a certified supervisory employee referenced at paragraphs (1) and (2) was certified.
- (5) The issuance and expiration dates of the certificate of any certified supervisory employee referenced at 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.

(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 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.

§ 83.4. Eligibility to apply for certification.

A person must complete an approved certification 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.

§ 83.5. Certification programs: Obtaining the Department's approval.

(a) **Approval required.** A person must 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 certification program must 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 § 83.3(a) (relating to requirements for food establishments), meets the food safety protection and training standards described at § 83.7 (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 set forth at § 83.16 (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 of § 83.7 (relating to certification programs: food safety protection and training standards).
- (3) The industry-specific category of food establishment, as described at § 83.3(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) Such other information as 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 such information as 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 must be delivered to the Department, at the address set forth at § 83.16 (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 set forth at 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.

§ 83.6. 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.

§ 83.7. Certification Programs: Food safety protection and training standards.

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

Topic

Foodborne illness

Time and temperature

Relationship between personal
hygiene and food safety

Food safety tracking system
Cleaning and sanitizing
Facilities and equipment layout
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; and
 - (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.

(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; and
 - (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; and
 - (viii) Transmissible.
- (2) Prevention of food contamination by food establishment 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; and
 - (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; and
 - (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; and
 - (vi) Product protection.
- (2) Receiving food, including the following subjects:
 - (i) Approved sources;

- (ii) Condition of food;
 - (iii) Thermometers and temperature checks;
and
 - (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; and
 - (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) H.A.C.C.P.; and
- (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) C.I.P. or cleaned in place;
 - (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; and
 - (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, C.I.P. 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; and
 - (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) Act or Food Employee Certification Act;
 - (ii) Certificate; and
 - (iii) 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.

§ 83.8. Format of a certification examination.

Although it is recommended that a certification examination consist of no fewer than 100 questions, under no circumstances shall 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 at § 83.3 (a) (relating to

requirements for food establishments).

§ 83.9. 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 set forth at § 83.16 (relating to contacting the Department), using a form provided by the Department upon request.

§ 83.10. 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 § 83.11 (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 set forth at § 83.16 (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 § 83.3(a)) with respect to which certification is sought.
- (5) Such other information as 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) **Departmental 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.

§ 83.11. 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 § 83.3(a), 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 certificate holder with respect to the industry-specific category of food establishment designated on the certificate.
- (7) Such other information as the Department might reasonably include.

(b) **Ownership of certificate.** A certificate issued by the Department shall remain the property of the Department. A certificate holder, 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 § 83.3(g) (relating to requirements for food establishments). Upon termination of a certified supervisory employee's employment, the employer shall surrender the certificate to the certificate holder named on the certificate.

§ 83.12. Renewal of certification.

(a) **General requirement.** A certificate holder 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 shall not require a written examination as a condition of completion. If a certificate holder 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 certificate holder must 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 set forth at § 83.16 (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, as described at § 83.3(a), with respect to which the applicant is certified.
- (4) The identification number and expiration date of the certificate.
- (5) Such other information as 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 at § 83.11(a)), its denial of renewal of certification or a request for additional clarification or documentation.

§ 83.13. Obtaining Departmental approval of a continuing education course.

(a) **Approval required.** A person must obtain the Department's approval of a continuing education course before the course will be considered an approved continuing education course for purposes of § 83.12 (relating to renewal of certification). Revisions or changes to a previously-approved continuing education course must 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 set forth at § 83.16 (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 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.

(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.

§ 83.14. 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.

§ 83.15. Suspension or revocation of certification.

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

- (1) Violates any provision of this chapter.
- (2) Violates any other sanitation regulations.
- (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 certificate holder 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 certificate holder by personal service or by regular mail to the address provided by the certificate holder on his application for certificate under § 83.10 (relating to applying for certification).

§ 83.16. 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

§ 83.17. 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 § 1 of the Act (at 3 Pa.C.S. § 6503(f)), 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 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

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 which was in effect prior to September 1, 1994 may, at its option, apply to the Department in accordance with the procedure set forth at § 83.5 (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 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 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.

§ 83.18. 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 chairman.
- (2) The chairman of the Agriculture and Rural Affairs Committee of the Senate, or his designee.
- (3) The chairman of the Agriculture and Rural Affairs Committee of the House of Representatives, or his designee.
- (4) The minority chairman of the Agriculture and Rural Affairs Committee of the Senate, or his designee.
- (5) The minority chairman of the Agriculture and Rural Affairs Committee of the House of Representatives, or his 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.

§ 83.19. 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.

97 JUN 11 10 31 AM

RECEIVED
GENERAL COUNSEL



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
LEGAL OFFICE

June 11, 1997

The Independent Regulatory Review Commission
14th Floor
333 Market Street
Harristown #2
Harrisburg, PA 17120

Re: **PROPOSED RULEMAKING**
Department of Agriculture
Bureau of Food Safety and Laboratory Services
7 Pa. Code Chapter 83
Food Employee Certification
I.D. No. 2-107

Dear Sirs:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

If I may be of further information, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Smith".

Dwight-Jared Smith
Assistant Counsel

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

I.D. NUMBER: 002-107
SUBJECT: Food Employee Certification
AGENCY: Department of Agriculture

97 JUN 11 11:14 AM
REGULATORY REVIEW ACT

TYPE OF REGULATION

- X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>6/1/97</u>	<u>Rebecca B. Gross</u>	HOUSE COMMITTEE ON
_____	_____	
<u>6/1/97</u>	<u>Tomas M. Robinson</u>	SENATE COMMITTEE ON
_____	_____	
<u>6-11-97</u>	<u>Frank Loggi</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
<u>6-11-97</u>	<u>June E. Katz</u>	LEGISLATIVE REFERENCE BUREAU

June 4, 1997