



Pennsylvania Restaurant Association

100 State Street, Harrisburg PA 17101-1034
(800) 345-5353 • (717) 232-4433 • Fax: (717) 236-1202

July 18, 1997

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

Attention: Martha M. Melton

Dear Ms. Melton:

The Bureau of Food Safety and Laboratory Services is to be commended for the development of proposed regulations that very closely approximates what the participating industries had intended when it proposed the Food Employee Certification Act, 3 Pa.C.S. §§ 6503(d) and 6505.

It is very important to realize however, that at the very core of industry's participation in this process was an understanding and agreement to utilize existing nationally recognized testing procedures for sanitation training as models wherever possible. In the restaurant industry's particular situation our SERVSAFE® courses are recognized as a model for training and for testing throughout the United States. We have several recommendations in areas where we think the Department could be more responsive to the existing industry standards.

We respectfully submit the following comments to improve the proposed regulations for the Food Employee Certification:

1. §76.2 - Definitions.

Under the definition of Foodborne disease outbreak - part (ii) states in significant part "The term includes a single case of illness such as one person ill from botulism or chemical poisoning."

It is our belief that this should be deleted as the new Centers For Disease Control, definition reflected in the 1997 FDA Food Code, no longer allows for this exemption.

2. §76.4 and 76.10 - Eligibility to apply for certification and Applying for certification.

The proposed regulations establish a passing score for the certification exam at 70% or higher on an approved certification examination. We believe that if the proposed regulations specify a specific passing score, it will invalidate all of the examinations that were developed based on nationally recognized standards for test development.

There are scientifically-based standards for determining the passing score for exams that all examinations must follow to be valid and reliable. The passing score for an exam is determined by the exam developer based on the recommendation of experts who compare the examination difficulty with the minimum knowledge required to function in the job being tested for. These scores are established after the test has been developed. Therefore, every approved exam may legitimately have a passing score. For instance, harder tests will likely have a lower passing score and easier tests will likely have a higher passing score.

Therefore, it is inappropriate to establish a specific passing score for already established certification examinations. The proposed regulations would be better served by stating that the Department will recognize examinations that are developed to national standards (i.e., *Standards for Educational and Psychological Testing* developed jointly by the American Psychological Association, American Educational Research Association and National Council For Measurement in Education). Our certification programs by the Educational Foundation of the National Restaurant Association comply with these national standards.

Once again, a passing grade determination should be established based on the existing standards that are nationally recognized and that the Department should retain the flexibility to establish passing scores based on the certification program proposals submitted to the Department which would subscribe to these national standards. It does not make sense to arbitrarily establish a passing score of 70% as the all encompassing standard.

3. §76.5 - Certification programs: obtaining the Department's approval.
 - (b) General requirements for approval - Can a certification program be approved if it addresses more than one industry-specific category of food establishment described in §76.3(a)? For instance, our SERVSAFE® Certification Program has been approved for restaurants, congregate feeding sites, contract feeders, institutional feeding, grocery stores, convenience stores, etc. Is it possible for us to have approval in all of these categories?
 - (d) Contents: Application for certification program approval - We have a concern if documents to be provided to the Department under (4) are made public. It could compromise the integrity of the certification process if there is not certain precautions taken.

For instance, we would recommend that the Department develop a form with the Association that would, in essence, capture the intent of the following paragraph:

“The Department of Agriculture and all of its employees understand and acknowledge that the Certification Examination and all of its contents are highly confidential and proprietary to the Educational Foundation of the National Restaurant Association, and that any copying, distribution or disclosure in any manner of any of its contents or any other breach of confidentiality would render the Certification Examination unusable and/or severely compromise the purpose for which the Certification Examination is being administered.”

This is a protection that is absolutely critical considering the confidential nature of testing.

- (7) We would hope that the Department understands that the ongoing demands of training and testing would make it necessary to provide a frequent or regular notification of course examination dates and locations as opposed to a listing for a year at a time or so. This would also apply under §76.13 (5) regarding re-certification.

4. §76.8 - Format of a certification examination.

This section states that questions shall be "multiple-choice questions, true or false questions or a combination thereof that adequately tests food protection knowledge with respect to an industry-specific category of food establishment..." We believe that this language may be overly restricted in view of future technological advancements.

For instance, in the future, as testing becomes more technologically advanced, we are likely to see computer-assisted assessments (i.e., non-paper and pencil), that may utilize other methods of demonstrating knowledge (e.g., short answer, fill in the blank, pick a scenario, etc.).

We would recommend that the Department change this section to enable recognized and approved certification programs the ability to change their methodology with Department approval but to not have it restricted to simply multiple-choice, true or false or a combination thereof.

Also in this section and §76.3, it does not appear to be as clear as it could be what examinations will be designated as "industry-specific." For example, our Educational Foundation of the National Restaurant Association's examination is applicable under §76.3 (a)(2), (3), (4). Does this require that the examination certificate have to indicate that it is just "industry-specific"? Our nationally recognized certificate currently says "Food Protection Manager Certification" and is presently being used by restaurants, contract feeders, foodservice operations as well as some national grocery store chains.

When the Pennsylvania Restaurant Association applies for approval of its SERVSAFE® program, will our application have to note that the program is for categories 2, 3 & 4?

5. §76.9 - Reporting results of a certification examination.

This section requires notification within 20 days. We find this reasonable but we would strongly suggest that this be clarified to specifically state business days. The reasons for this are clearly obvious.

6. §76.14 - Reciprocity with other states.

The proposed language states that "The Department may accept certification issued to a person by another state if both the following occur..." We concur with the intent of this language however, it brings up a situation that presently is commonplace.

For instance, a restaurant may have multiple units in different states and certifies its managers at a central training facility in another state using the SERVSAFE® program of the Educational Foundation of the National Restaurant Association. Upon completion and testing, the Educational Foundation certifies those individuals as being eligible under the guidelines and requirements of its program.

If that state does not require certification, then this proposed language 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.

Page Four
Letter to Ms. Martha M. Melton
July 18, 1997

Therefore, we respectfully request that the language be amended to reflect that individuals who work in Pennsylvania that take Pennsylvania approved courses in another state that may or may not have certification and whose program "is a program that meets or exceeds Pennsylvania requirements" be recognized by the Department of Agriculture and meet the conditions of reciprocity.

7. §76.15 - Suspension or revocation of certification.

This section clearly states how someone may have their certification revoked. What is not clear is how they may have their certification reinstated after suspension or revocation. It is our belief that this may be covered under the Eating and Drinking Law however, we believe that language specifically addressing this would be more appropriately place in these regulations.

We appreciate the opportunity to comment on the Proposed Regulations for Food Employee Certification. We would appreciate the opportunity to discuss our recommendations with you at your convenience.

Sincerely,



Michael L. McGovern, CAE
Executive Vice President

cc: Samuel E. Hayes, Jr., Secretary
Leroy C. Corbin, Director
Bureau of Food Safety and Laboratory Services
Richard M. Sandusky, Director, Regulatory Analysis
Independent Regulatory Review Commission
RE; 2-107

MLM/jah

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facsimile
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To: Martha Melton
Of: Pa. Dept. Of Agriculture
Fax: 717-787-1873
Phone: 717-772-8354
Pages: 1, including this cover sheet.
Date: July 18, 1997

Following are my comments about Pa. Code Ch. 76:

Will a certified food manager be required to be present for every shift?

Will an outside agency be responsible for grading the examination? If not, who will grade it?

Section 76.2. Definitions: Temperature Danger Zone: Will the range be changed to read from 41° to 140° as is in the FDA Food Code which I understand Pa. will be adopting soon?

Will an establishment that has several types of operations be required to have several different permits, such as an Acme which has prepared food and bakery operations in addition to retail products?

Finally, it surprises me that there is no one appointed to the Certification Advisory Board from the medical or public health field. The act states that "...at least one representative shall have experience in the field of public health". Is that experience to be current or could it be past? It is rather vague and doesn't sound as though this area is taken as seriously as the representation of all the industry. What do you think?

Thanks for the chance to preview. All the Delaware County jurisdictions were given notice and a copy of the Bulletin article.

From the desk of...

GINGER HEIM
HEALTH OFFICER
RADNOR TOWNSHIP
301 IVEN AVENUE
WAYNE, PA. 19087
610-688-5800 x 149
Fax: 610-971-0450



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF FOOD SAFETY AND LABORATORY SERVICES

July 22, 1997

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RECEIVED

Independent Regulatory Review Commission
333 Market Street 14TH FLOOR
Harrisburg, PA 17120

Dear Sir:

In accordance to the Regulatory Review Act (at 71 P.S. Section 745.5[b.1]), I am submitting written comments received with respect to the proposed Food Employee Certification Regulations.

The proposed regulations were published in the PA Bulletin on June 21, 1997.

Please call if you need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Martha M. Melton".

Martha M. Melton
Sanitarian Program Specialists



THE COUNTY OF CHESTER



COMMISSIONERS:
Karen L. Martynick, Chairman
Colin A. Hanna
Andrew E. Dinniman

CHESTER COUNTY HEALTH DEPARTMENT
Government Services Center
601 Westtown Road, Suite 295
West Chester, PA 19382-4543
FAX: (610) 344-5934

Sewage/Wells (610) 344-6526
Food/Vector (610) 344-6689
Laboratory (610) 344-6439

Certified Food Mgr./Public Water (610) 344-5938
Solid Waste Mgt./Recycling (610) 344-5937
Weights & Measures/Consumer Affairs (610) 344-6150

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July 18, 1997

Martha M. Melton
Sanitarian Program Specialist
PA Department of Agriculture
Bureau of Food, Safety and Laboratory Services
2301 North Cameron Street
Harrisburg, PA 17110-9408

RE: Proposed Chapter 76 - Food Employee Certification

Dear Ms. Melton:

We wish to provide the following comments concerning the proposed Chapter 76 - Food Employee Certification regulations as published in the June 21, 1997 issue of the Pennsylvania Bulletin.

Our comments, we believe, are important concerns that must be addressed if a successful State-wide food employee certification program is to be initiated in Pennsylvania. As you recall we have operated a successful certification program in Chester County for over 20 years. We were one of the first programs initiated in the United States and were recognized by FDA as one of 22 approved programs in the country. We presently have over 3,000 valid certifications outstanding. We are still one of the few in the country who have successfully incorporated the non-profit food service entities into our certification program. We believe our experience in initiating and operating a successful program can be helpful to you as you develop State-wide requirements and initiate your program.

This letter incorporates the comments of John P. Maher, M.D., M.P.H., County Health Director; J. Andrew Worth, Environmental Health Supervisor; Joseph Arvay, Assistant Environmental Health Supervisor and myself.

We include many of the same comments that were forwarded to you in our November 20, 1996 letter following your early submission of the initial draft of the regulations to us for review. Along this line we are quite dismayed that so few of our earlier suggestions were acted upon.

Our specific comments are as follows:

Chapter 76.2.

While the introductory overview section explains why the Department believes it is necessary to define such a long list of terms, we repeat our concern that such terms merely support the listing of required curriculum and are, therefore, unnecessary. The terms that do not pertain directly to the certification process or to the responsibilities of the Certified Supervisor Employee should not be included in these regulations. If such definitions are to be listed in regulations they would perhaps be more correctly listed in the separate State Food Code and its accompanying regulations although we note in

comparison that the U.S. Public Health Service FDA Food Code does not list most of the definitions noted in the draft Chapter 76 document.

We also have a great deal of difficulty with the correctness of many of the terms as defined. As we suggested earlier, several of the definitions are simply incorrect. As an example, Asymptomatic is not an individual "presenting no evidence of disease." Such an individual would be a well person. Asymptomatic should be defined as "neither causing nor displaying symptoms." An additional concern/problem is that while you include a broad range of definitions, the list remains incomplete. An example is the inclusion of some foodborne disease organisms while not including a good many others. If you are going to include medical definitions, we would suggest that the list and the definitions be reviewed by an epidemiologist with the PA Department of Health.

Similarly some of the technical terms must be reviewed for correctness using BOCA building codes and other reference literature. In addition, other extremely important terms (sewage, wastewater, vectors, refuse, solid waste, etc.) are not even mentioned. These are important subjects for all food employees to understand and be prepared to properly manage. They are common violations we consistently observe while making our inspections.

Chapter 76.3.

While the regulations specify requirements for food establishments, they do not address requirements for the Certified Supervisory Employee. This is a critical oversight. The proposed regulations are entitled, "Food Employee Certification" and yet no requirements are listed for these employees. A separate section of the regulations should be added to correct this oversight. Early on in our program we were asked by several certified managers to include such requirements not only in our regulations but on each certificate we issue. This strengthens the employee's ability to work with the owner and/or management in correcting violations that he or she observes.

In Subsection 76.3(a)(2) the wording should be changed to: "Food service that prepares and/or serves..."

While Section 76.3(a) lists the five (5) industry-specific categories of food establishments there are no specific certification requirements mentioned anywhere in the proposed regulations for each category. What is the purpose of these categories and what specific courses and hours are required for each category?

Chester County has contemplated a limited certification category for retail food stores, however, with the rapid turnover of employees in the food service industry and with employees going from one category of establishment to another it would be too cumbersome to track employees where there was more than one category of certification. We also felt it would result in irritated managers when they discovered that their certificate did not apply to their new position.

If you continue with categories, we would then suggest that an additional category be added for mobile and temporary food facilities. Such operations often pose considerable public health-communicable disease concerns.

Chapter 76.4.

There appear to be inadequate provisions to require that each establishment maintain a certified employee. The wording, "or designate" in 76.3.(b) is viewed as a loophole. Our regulations require that one manager in a supervisory capacity maintain certification. We interpret this to mean that this certified individual must work full-time in a supervisory capacity to properly carry out the required duties and responsibilities.

We are still concerned that there is no way to become certified other than through an approved course. Individuals who are thoroughly knowledgeable in food safety and sanitation should be afforded the opportunity to show they are proficient in these areas without attending a course. We have for years used a Proficiency, Challenge test to allow those individuals with experience and formal food service education to become certified. In addition, the three training centers in Chester County concur that even with the ServSafe course they use, the applicant does not have to attend any courses but rather can just show up to take their exam.

Chapter 76.5.(d) through Chapter 76.7.(b) through (h)

These sections provide much more detail than is normally provided in State regulations. By providing such detail it does not allow for variety or the ability to add new information as will occur in the future. You certainly need to list the subjects to be covered as you have done in Section 76.7.(a) but other than a short description of each topic we do not feel it is necessary to provide detailed descriptions. Neither do we feel it is necessary to describe the content of the application form for program approval as listed in Section 76.5.(d).

Chapter 76.7.

The previous draft included a requirement stating that a minimum of 15 hours of instruction followed by the minimum hours for each topic of instruction were necessary for certification. These requirements have unfortunately now been removed in the published draft. If anything should be included in the regulations it is a listing of the specific number of hours and topics to be considered in the certification program. This is the heart of the program and without listing such requirements there is really no need to even propose the regulations. If the intent is to make the requirements industry-specific, then a listing of hours and topics to be required for each category should be listed in the regulations.

Chapter 76.10.

We would suggest that the person conducting the training and the proctor of the examination be permitted to hand out the application form for submission to the Department.

Chapter 76.11.

We would suggest that the Certificate list the responsibilities of the certificate holder.

Chapter 76.12.

It is understood from these sections that an individual holding a certificate needs to obtain 7.5 hours of approved continuing education; however, other than the statement in 76.13.(c)(2) that a course must address regulatory or food industry changes, updates or advancements, there are no curriculum guidelines. The statistics that Chester County has collected over the years indicate that a general review of food safety and sanitation issues is needed. This was the case in Chester County when our certification period was only two years. With the five year certification period the State has mandated it is even more important to provide a general review in addition to updating information.

We are pleased that the number of hours (7.5) is listed as the requirement for recertification, however, we are confused as to why the number of hours for the initial certification is not listed.

In addition, does the Department plan to mail out renewal applications? This does not need to be listed in the proposed regulations but should be considered by the Department.

Chapter 76.14. and 76.17.

These two sections need to be combined. Reciprocity is discussed in both sections. 76.17.(c) and (d) are very confusing and seem to repeat what has already been stated in (a) and (b).

Chapter 76.18.

While this section describes the membership of the Advisory Board as appointed by the Secretary of Agriculture, we still have grave concerns that the membership only consists of one member experienced in the field of public health. While we understand that the membership is described in the enabling legislation, we would suggest that the Secretary seriously consider correcting this deficiency. As a program with direct public health ramifications it is important that public health interests be treated equally with the industry-political interests. The present make-up of the Advisory Board does not come close to satisfying this concern. It would also seem logical that one member be from an agency in Pennsylvania who has successfully operated such a program. This could be a great help to other Advisory Board members and the Department. From experience we can tell you that this is an extremely difficult program to develop, initiate and coordinate. The development of the regulations is one of the easier tasks.

Overall we do not believe that the level of detail described in this regulation is needed. As an example, the PA Department of Environmental Protection, Sewage Enforcement Officer's program operates successfully under State regulations which are quite brief.

As a reference document I have included a copy of my November 20, 1996 comment letter which addressed items of concern in your earlier draft of the proposed regulations.

If you have any questions concerning our comments please feel free to contact me at (610) 344-6492 or FAX me at (610) 344-5934.

Sincerely,



David A. Jackson, R.S., Director
Bureau of Environmental Health Protection

DAJ/edc

c: ✓ Independent Regulatory Review Commission
Helen Burns, PA Dept. of Health
County/City Environmental Health Directors
John P. Maher, M.D., M.P.H.
J. Andrew Worth. R.S.
Joseph Arvay

Original Faxed on July 18, 1997

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Martha Melton, Sanitarian Program Specialists
Commonwealth of Pennsylvania
Department of Agriculture
3201 North Cameron Street
Harrisburg, PA 17110-9408

Dear Martha:

I had an opportunity to review and comment on the Food Employee Certification proposed regulation recently published in the Pennsylvania Bulletin. Attached for your review and consideration are comments which Giant Food Stores, Inc. would like to see incorporated into the final regulation. You will find these recommendations mirror those suggested by the Pennsylvania Food Merchants Association.

Again, I would like to thank you for including Giant in this process and we look forward to working in conjunction with your department in the future. Feel free to contact me directly at 717-240-7577 if you have any questions.

Sincerely,



Larry Kohl, R.S.
Manager, Quality Assurance/Sanitation

Giant Food Stores, Inc.
P.O. Box 249
Carlisle, PA 17013-0249



RECYCLED PAPER FOR
A BETTER ENVIRONMENT

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Fax: (717) 249-5871



Section 76.3 Requirements for food establishments

(e) *Certification records.* A food establishment shall maintain the following information at the food establishment site **OR AT THE ESTABLISHMENTS CORPORATE OFFICE.**

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

Recommend public view is clearly defined.

Section 76.5 Certification Programs: obtaining the Department's approval

(d, 5) *Contents.* A copy **OR LISTING** of all teaching materials for the certification program, unless the certification program is a home-study program.

(f) *Deadline for filing the application.* "... at least **45** days in advance of the proposed date upon which the program is to be conducted.)

(g) *Departmental and Advisory Board action on application.* "... If the majority of the Advisory Board recommends..." **Recommend majority is clearly defined.**

Section 76.10 Applying for certification

(a) *Application required.* A person who has attained a score of 70% or higher on a certification examination **OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL.** may apply to the Department for certification **OF THAT INDIVIDUAL.**

(b) *Form of application.* A person seeking certification under the act, **OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL.** may obtain an application form from the Department...





Section 76.12 Renewal of certification

(a) *General requirement.* A certificate holder shall obtain at least **4 HOURS** of approved continuing education in the area of food safety and sanitation every 5 years...

(b) *Application for renewal.* A person seeking renewal of certification under this section **OR CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL** may obtain an application form from the Department at the address in Section 76.16. The applicant, **OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL** shall complete the form and return it to that same address.

(c) *Departmental action on application.* A person **OR CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL** shall obtain the Department's approval...

Section 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 **REPEATEDLY** does one or more of the following:





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PFMA Officers

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David L. McCorkle

July 15, 1997

Martha M. Melton
PA Department of Agriculture
Bureau of Food Safety and Laboratory Services
2301 North Cameron Street
Harrisburg, PA 17110-9408

Dear Ms. Melton:

Thank you for the opportunity to review and comment on proposed regulations to implement the Food Employee Certification Act of 1994. We are anxious to see these regulations adopted as soon as possible so food establishments may begin complying with the law.

Pennsylvania Food Merchants Association offers the following comments on the proposed regulations:

§ 76.2 Definitions

Add: MAJORITY OF A QUORUM OF THE ADVISORY BOARD—specify what number would constitute a quorum.

This will help clarify for all interested parties how many members of the Board must be in agreement for approval of training programs, etc.

§ 76.3 Requirements for food establishments

(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 AND WHO IS RESPONSIBLE FOR IMPLEMENTING COMPANY POLICIES, PROCEDURES AND STANDARDS FOR THE PREVENTION OF FOODBORNE ILLNESS.

This will ensure the *proper* supervisory employee receives food safety training.

(e) *Certification records.* A food establishment shall maintain the following information at the food establishment site OR AT THE ESTABLISHMENT'S CORPORATE OFFICE:

This will allow much easier record-keeping and retrieval for both food establishments and the Department of Agriculture. Frequent employee turnover, even at the managerial level, could hinder the maintenance of long-term records at the store level.

Services for our Members:

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P.O. BOX 870 • CAMP HILL, PA 17001-0870

1-800-522-9983 PA Only
1-800-543-8207 National

Handwritten signature
JUL 17 1997

Martha Melton
July 15, 1997
Page Two

(§ 76..3 Requirements for food establishments continued)

(g) Posting of certificate. A food establishment shall post the original certificate of its certified supervisory employe in public view at its business location, IN THE ENTRANCEWAY, IN THE CUSTOMER SERVICE AREA OR AT THE CASH REGISTER FOR ESTABLISHMENTS HAVING NO CUSTOMER SERVICE AREA.

This will clarify "public view," and pre-empt any overly broad interpretations of the phrase.

§ 76..7 Certification programs: food safety protection and training standards.

Specify the total minimum number of training hours a program must include to receive approval by the Department. This will assist the Department by encouraging only those programs that are likely to meet the minimum to apply, and will assist companies that may wish to design training programs of their own to submit for department approval.

~~*(g) (8) Review of plans for equipment and building lay out and design.*~~

This topic is covered adequately under the other portions of §76.7(g), including (2), proper equipment design and location.

§ 76.10 Applying for certification.

(a) Application required. A person who has attained a score of 70% or higher on a certification examination, OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL, may apply to the Department for certification OF THAT INDIVIDUAL.

(b) Form of application. A person seeking certification under the act, OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL, may obtain an application form from the Department...

This will allow a corporate office to quickly and efficiently process an individual store employee's application for certification, rather than placing that responsibility on the individual.

§ 76.11 Certificate.

(D) REPLACEMENT CERTIFICATE. IN THE EVENT THAT A CERTIFICATE BECOMES LOST OR DAMAGED, THE DEPARTMENT SHALL ISSUE A REPLACEMENT CERTIFICATE AT THE REQUEST OF THE CERTIFIED INDIVIDUAL OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL.

The department should make some provision for replacement of lost or damaged certificates.


JUL 17 1997

Martha Melton
July 15, 1997
Page Three

§ 76.12 Renewal of certification.

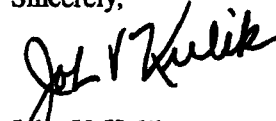
(b) Application for renewal. A person seeking renewal of certification under this section, OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL, may obtain an application form from the Department at the address in §76.16. The applicant, OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL, shall complete the form and return it to that same address.

(c) Departmental action on application. The Department will, within 30 days of receiving an application, mail the applicant OR A CORPORATE REPRESENTATIVE FOR THAT INDIVIDUAL a certificate...

These again address the issue of corporate offices handling the administrative aspects of the certification process for their individual stores and employees.


Please call if you need any clarification or additional information on our proposed changes. The association will be encouraging all our members to comply with the Food Employee Certification Act as soon as final regulations are published and certification courses approved.

Sincerely,



John V. Kulik
Vice President
Government Relations

JVK:jlh


JUL 17 1997



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF FOOD SAFETY AND LABORATORY SERVICES

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Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, Pennsylvania 17120

Dear Sir:

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The proposed regulations were published in the PA Bulletin on June 21, 1997.

Please call if you need any additional information.

Sincerely,

Martha M. Melton

Martha M. Melton
Sanitarian Program Specialists

Allegheny County Health Department 21 1997

COUNTY COMMISSIONERS

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Frank B. Clack Health Center
Food Protection Program
3901 Penn Avenue, Building #1
Pittsburgh, Pennsylvania 15224-1344
Phone: (412) 578-8044
FAX: (412) 578-8190

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July 21, 1997

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Ms. Martha M. Melton
Commonwealth of Pennsylvania
Department of Agriculture
Bureau of Food Safety and Laboratory Services
2301 N. Cameron Street
Harrisburg, PA 17110-9408

Dear Ms. Melton:

Attached are Allegheny County Health Department's comments to the Pennsylvania Food Employee Certification Act.

Please contact me with regard to these comments so that we can discuss them.

Sincerely,

Glenda M. Christy
Glenda M. Christy, Chief
Food Protection Program

mmg
attachment

- Section 76.3 (a): Since each training class must meet the same standards under section 76.7, then what is the relevance of having courses approved under four different industry-specific categories (food processor, food service, bakery, retail, frozen dessert)? It's not known how much cross-over there is in the industry, but it seems that a person who is certified and understands what causes foodborne illness could apply that knowledge in more than one segment of the industry without taking a separate training course. The industry-specific requirement should be eliminated because it is not necessary. If it stays, then industry-specific training standards would be needed for each category.
- Section 76.3 (d): Change "3 months" to "90 days" to be consistent with Section 76.3 (c).
- Section 76.4: The passing score was changed from 75% to 70% from the previous draft. Any specified passing score is too restrictive. Some nationally recognized testing groups do not use a passing score, but rather pass/fail. Placing a passing score in the regulations without knowing anything about the various exams seems arbitrary. Setting appropriate cut scores for examination is critical to assuring the validity and credibility of the certification process.
- The use of "approved certification examination" in this section should be clarified to indicate that it meets current psychometric standards.
- Section 76.5 (a): This section states that revisions or changes to a previously approved certification program must be approved by the Department. You may not want this for every change, especially something minor. There should be some language that says if the program is changed such that it no longer meets the training standards or psychometric testing standards, then it must be approved by the Department.
- Section 76.5 (b): What are the criteria or standards for an approved program to address an industry-specific category of food establishment? Clarification is needed on this point.
- Recommend that the food safety training standards referred to in Section 76.7 be reviewed to assure consistency with those agreed to at the 1996 Food Protection Conference.
- Section 76.5 (d): The requested information should include a requirement that proof be shown that test developed follow recognized psychometric standards. Also, information must be submitted on methods used to assure test security.
- Section 76.6: The audit should also deal with test security issues including control of the tests, proctoring, cheating, teaching to the test, etc.

Section 76.7: Assure that all training areas are covered as listed in recommendations from 1996 Food Protection Conference.

Section 76.8: There is at least one testing group whose test is only 60 questions. While a minimum number of questions should be required, you need to look at what tests are out there and their effectiveness in measuring food safety knowledge. No true or false questions should be permitted on the exam (50% chance of getting it right).

Section 76.10 (a): See comments for Section 76.4.

Section 76.12: Suggest that passing an approved certification examination be added, especially after 5 years.

Section 76.17: Certificates issued by local health departments should be accepted statewide if they are comparable to those imposed by the Act.

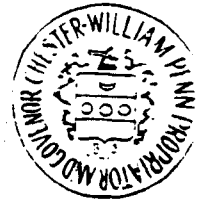
Food Protection Certification Programs that are offered by local health units should be accepted in the rest of the state providing that it is comparable and that a reciprocal agreement between the local health unit and the state agreeing to accept each other's certification program is in place.

It would seem that there should be a reciprocal agreement between PDA and ACHD accepting certifications issued by each other. It appears that the reciprocity afforded to other states isn't permitted for certification programs offered by local health departments in Pennsylvania.

A reciprocal agreement for existing programs would result in greater uniformity of food safety programs in the state.



THE COUNTY OF CHESTER



Commissioners:
Karen L. Martynick, Chairman
Colin A. Hanna
Andrew E. Dinniman

CHESTER COUNTY HEALTH DEPARTMENT
Chester County Government Services Center
601 Westtown Road, Suite 295
West Chester, PA 19382-4543
(610) 344-6237
FAX (610) 344-6727

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SMITH
SANDUSKY
WYATTE
BERESCHAK

November 20, 1996

Martha M. Melton
Sanitarian Program Specialist
PA Department of Agriculture
Bureau of Food Safety & Laboratory Services
2301 North Cameron Street
Harrisburg, PA 17110-9408

RE: Draft Regulations Food Employee Certification

Dear Ms. Melton:

Thank you for the opportunity, early in developmental process, to review and comment on the proposed regulations for Food Employee Certification. Drawing from our 20 years of experience in both initiating and administering a similar Certification Program, currently with 3,000 valid Certifications outstanding, we believe our comments and suggestions will be particularly helpful to you.

I should mention that due to the importance of these proposed regulations to the State-wide food protection program and with our active involvement in actually operating a certified food manager's program our letter incorporates the comments of John P. Maher, M.D., M.P.H., County Health Director, J. Andrew Worth, R.S., Environmental Health Supervisor for our Food Protection Program, Kelly Dempsey, Environmental Health Specialist II and Coordinator of our Certified Food Manager's Program and myself.

The Department of Agriculture is to be complimented on your decision to present a quality program with a meaningful course requirement. In order to carry out the intent of requiring a full-time person at each licensed facility, certified as having successfully passed a 15 hour course in food sanitation, we make the following comments and suggestions:

Section 83.2.

The definitions section, needs to be extensively revised. In many cases the definitions are imprecise or scientifically incorrect. Most of the terms defined here merely support the listing of required curriculum and are, therefore, unnecessary. The terms that do not pertain directly to the certification process or to the responsibilities of the Certified Supervisory Employee should not be included in these regulations. We believe most of the terms have a common use definition understood in the industry. As a comparison we note that the U.S. Public Health Service FDA Food Code does not list most of the definitions noted in the draft Chapter 83 document. Neither have we seen other State regulatory documents which have gone into such detail. An additional concern/problem is that while you include a broad range of definitions, the list remains incomplete. An example is the inclusion of some foodborne disease organisms (Salmonella & Staphylococcus) while not defining other serious foodborne disease organisms (Campylobacter, Vibrio cholera, toxic E coli, Giardia, Shigella, etc.). This is another

reason the number of definitions must be limited to only those needed for the certification process and the responsibilities of the Certified Supervisory Employee. If the definitions are to be retained which only relate to course curriculum, we could lend assistance in making them more precise and acceptable.

We would also suggest that an individual experienced in public health, especially in medical terminology, review the definitions relating to medical terms to determine correctness and completeness. We have several questions specifically relating to the definitions for: Asymptomatic, Bacteria, Communicable disease, Confirmed disease outbreak, E. coli, Fungi, Hepatitis A infection, Highly susceptible group, Intoxication, Salmonella enteritidis, virus, etc. Even though these definitions really are not necessary in the regulations as we have stated earlier, if they are used, they must be corrected.

Section 83.3.

This draft lacks the requirements and responsibilities that a Certified Supervisory Employee will have in the facility where their certificate is used. If an individual successfully completes the certification process and displays their certificate, but does not know his/her responsibilities, then the program's goal will not be achieved. Several years ago we discovered this shortcoming of our program and developed a list of duties and responsibilities which now are listed on the face of the certificates we issue. This is a critical concern both in ensuring that the goals of the certification program are met and in addressing the question of legal obligations which the legal profession will ask, especially after food outbreaks occur.

Section 83.3.(a)

The purpose of this section is not clear. Although other sections in this draft document refer back to these categories, at no point is the intent of these categories defined. Chester County has contemplated a limited certification category for retail food stores, however, with the rapid turnover of employees in the food service industry and with employees going from one category of establishment to another it would be too cumbersome to track employees where there was more than one category of certification. We also felt it would result in irritated managers when they discovered that their certificate did not apply to their new position.

We would also suggest that Section 83.3.(a) include an additional category for mobile and temporary food facilities. Such operations often pose considerable public health-communicable disease concerns.

Section 83.3.(b)

There appears to be inadequate provisions to require that each establishment maintain a certified employee. The wording, "or designate" in Section 83.3(b) is viewed as a loophole. Our regulations require that one manager in a supervisory capacity maintain certification. We interpret this to mean that this certified individual must work full-time in a supervisory capacity to properly carry out the required duties and responsibilities.

Section 83.4.

We are concerned that there is no way to become certified other than through an approved course. Individuals who are thoroughly knowledgeable in food safety and sanitation should be afforded the opportunity to show they are proficient in these areas without attending a course. We have for years used a Proficiency, Challenge Test to allow those individuals with experience and formal food service education to become certified. In addition the three training centers in Chester County concur that even with the ServSafe Course they use, the applicant does not have to attend any classes but rather can just show up to take their exam.

Section 83.5.(d) and Section 83.7.(c) through (i)

These sections provide much more detail than is normally provided in State regulations. By providing such detail it does not allow for variety or the ability to add new information as will occur in the future. You certainly need to list the subjects to be covered as you have done in Section 83.7.(a) and (b) but other than a short description of each topic we do not feel it is necessary to provide detailed descriptions. Neither do we feel it is necessary to describe the content of the application form for program approval as listed in Section 83.5.(d).

Section 83.8.

According to this section the certification examination must consist of no fewer than 100 questions to be approved. Most standard exams have between 60 and 85 questions, and therefore, could not be approved under the State program. This includes The Educational Foundation of the National Restaurant Association's ServSafe Course and the National Assessment's Certified Professional Food Manager Program. Most private companies and Act 315 Health Departments, which have mandatory certification programs in place, utilize one or both of these programs. It has been our opinion that the content of the test is more important than the number of questions on the test. Some tests may meet the 100 question requirement but do not adequately cover the critical control points of food safety and sanitation.

Sections 83.12. and 83.13.

It is understood from these sections that an individual holding a certificate needs to obtain 7.5 hours of approved continuing education; however, other than the statement in 83.13.(c)(2) that a course must address regulatory or food industry changes, updates or advancements, there are no curriculum guidelines. The statistics that Chester County has collected over the years indicate that a general review of food safety and sanitation issues is needed. This was the case in Chester County when our certification period was only two years. With the five year certification period the State has mandated it is even more important to provide a general review in addition to updating information.

Section 83.14.

To limit reciprocity only to other states as described in this section is unreasonable. There are four Act 315 Health Departments with Certification Programs in place, however, the draft regulation does not include anything about intra-state reciprocity. Additionally, there are at least 90 jurisdictions in the United States that have Certification Programs, many of which are located in states where there is no state program. We believe what is important is the content of the courses being taught not whether such courses are inter or intra-State Programs. We also do not believe this was the intent of the legislature when they passed the Food Employee Certification Act.

Section 83.17.

While this section describes the membership of the Advisory Board as appointed by the Secretary of Agriculture, we have grave concerns that the membership only consists of one member experienced in the field of public health. While we understand that the membership is described in the enabling legislation we would suggest that the Secretary seriously consider correcting this deficiency. As a program with direct public health ramifications it is important that public health interests be treated equally with the industry-political interests. The present make-up of the Advisory Board does not come close to satisfying this concern. It would also seem logical that one member be from an agency in Pennsylvania who has successfully operated such a program. This could be a great help to the other Advisory Board members and the Department. From experience we can tell you that this is an extremely difficult program to develop, initiate and coordinate. The development of the regulations is one of the easier tasks.

If you have any questions concerning our comments please feel free to contact me at (610)344-6492
or Fax me at (610) 344-5934.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Jackson". The signature is fluid and cursive, with the first name "David" being the most prominent.

David A. Jackson, R.S., Director
Bureau of Environmental Health Protection

c: John P. Maher, M.D., M.P.H.
J. Andrew Worth, R.S.
Kelly Dempsey



COUNTY OF ERIE
Department of Health

606 West Second Street
Erie, Pennsylvania 16507
814 / 451-6700
Fax: 814 / 451-6767

Judith M. Lynch
County Executive

Joseph Traybald
Director

File: 1858
cc: Harbison
Sandusky
Smith
Waytte
Berwschak

97 JUL 10 1996
ERIC COUNTY BOARD OF HEALTH
Stanley J. Zagorski
Vincent L. Jenco, D.O.
Howard A. Nadworny, M.D.
Geraldine D. Zum
Bonita K. Booker

October 24, 1996

Ms. Martha M. Melton
Sanitarian Program Specialist
Pennsylvania Department of Agriculture
Bureau of Food Safety
2301 North Cameron Street
Harrisburg, PA 17110-9408

Dear Martha:

Thank you for the opportunity to review and comment on the proposed regulation for food employee certification. We feel this draft is a good start toward a fair and comprehensive regulation. There are several comments we have for your consideration in further draft revisions.

1. Most of the definitions are redundant, self-explanatory or inaccurate and should be deleted. The statute already contains the definitions germane to these regulations.
2. Section 83.3 - Could you reduce the industry specific categories by combining (2) and (4), since they both involve almost identical operations and potential hazards?
3. Much of section 83.3 is redundant, since it is already part of the statute and need not be repeated. Examples include 83.3(b), (c) and (d).
4. We strongly suggest you completely revise your draft sections 83.3(h) and 83.11(b) and the concept that a certificate is the property of the Department. The certificate should be the property of the person that acquired it. In this way, the certificate holder is free to change employers and still retain his/her certification. An employer must have a certified employee and can arrange to have an employee become certified or hire one that already is.
5. A person should not be required to take the certification course before taking the exam. There are experts in the field that do not need to take the course in order to pass the exam. References to requiring a candidate take a certification course should be deleted or modified.

Ms. Martha M. Melton
Page 2
October 24, 1996

6. Section 83.10(c) should be deleted. It is already covered by statute and is redundant and unnecessary.
7. Sections 83.2(g) and 83.11(c) say essentially the same and should be combined. The last sentence in section 83.11(c) should be deleted, per our comment #4.
8. Section 83.15(a) should be changed to read:

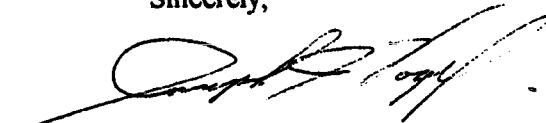
The Department may suspend or revoke a certification if the person is responsible for a substantial violation of:

- (1) Any provision of this chapter;
 - (2) The Public Eating and Drinking Place Law or regulations promulgated thereunder;
 - (3) The Food Act or regulations promulgated thereunder.
9. Section 83.17 is covered by statute and is therefore redundant and unnecessary.
 10. Likewise, Section 83.18 is covered by statute and is therefore redundant and unnecessary.
 11. The draft regulation is strangely silent on requirements for temporary, mobile or seasonal food establishments. How do you intend to address this issue?

Finally, the proposed regulation needs to develop a mutually acceptable role for the Act 315 certified health departments in providing comprehensive certification programs for facilities located within their jurisdictions.

Please feel free to contact us if you want further information on our comments, and please keep us up to date on the progress of this regulation.

Sincerely,



Joseph J. Vogel, Director
Environmental Health



ORIGINAL: #1858
COPIES: HARBISON
SMITH
SANDUSKY
WYATTE
BERESCHAK

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF FOOD SAFETY AND LABORATORY SERVICES

July 29, 1997

INDEPENDENT REGULATORY
REVIEW COMMISSION

Independent Regulatory Review Commission
333 Market Street 14TH FLOOR
Harrisburg, PA 17120

Dear Sir:

In accordance to the Regulatory Review Act (at 71 P.S. Section 745.5[b.1]), I am submitting written comments received with respect to the proposed Food Employee Certification Regulations.

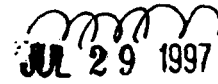
The proposed regulations were published in the PA Bulletin on June 21, 1997.

Please call if you need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Martha M. Melton".

Martha M. Melton
Sanitarian Program Specialists



JUL 29 1997

Health Regulation Compliance, Inc.
 Accredited food safety & HACCP training
 National course administration center: One Green Street Hulmeville, PA 19047
 800-723-3873 Fax (215) 757-9521

July 21, 1997

To: Robert Nyce, IRRC; Hon. Sen. Daniel Delp, Agriculture and Rural Affairs Committee
 Chairman; Hon. Raymond Bent, Agriculture and Rural Affairs Committee Chairman; Hon. State
 Reps. Matthew Wright, Paul Clymer, David Stail

Dear Sirs,

We applaud PA for joining other states and cities, such as Texas, Florida, Connecticut, Rhode Island, Wisconsin, Illinois, that have mandated food manager training and certification. At this time, the final rules and regulations are being completed (7 PA code, Chapter 76 "Food Employee Certification").

As the nation's largest food safety education organization, based in Pennsylvania, we are pleased to offer our expertise to help Pennsylvania avoid a few minor difficulties that other jurisdictions have experienced when implementing this program.

First, we feel it is important for everyone to understand the scientific validity and lifesaving importance of food manager certification, and suggest that the rule be retitled "Food Manager" or "Supervisory Employee" certification to avoid confusion.

Foodborne illness, or disease caused by the contamination of microorganisms in food, is commonly misdiagnosed and under-reported to health authorities and the medical community. Official national estimates of deaths from foodborne illness range from 9,000 to 16,000 deaths annually. However, these numbers reflect only reported cases, so the actual number of deaths is believed to be much higher. Aside from fatalities, foodborne illness afflicts up to 61 million Americans per year, resulting in an economic cost of between \$ 7 and 23 billion dollars annually. (Sources: 1995 FDA Model Food Code - preface, Norman C. Marriott - Principles of Food Sanitation, 3rd Ed., 1994)

Moreover, recent medical studies regarding the severe and diverse chronic sequelae (long term effects) of foodborne illness include renal disease, neurological disorders, rheumatoid disease, and auto immune thyroid disease. (Source: Dr. James A Lindsay, University of Florida, as reported at NEHA, 1997)

It is accepted fact that most foodborne disease is caused by commercial food establishments. With the food service industry growing at a rate of over 5% each year, and more Americans eating out regularly than ever before, the rate of foodborne illness and death is likely to increase. (Sources: CDC, 1993, Natl. Restaurant Association, 1996).

It is important to understand that most foodborne illness can be prevented by proper food handling and preparation. These procedures are relatively simple yet critical. However, they are often not consistently followed, as most food handlers have a casual attitude about food handling. We know from scientific studies that even one careless act that results in microbial or viral contamination can result in the deaths of many people.

Scientific research has proven that food safety education saves lives by reducing critical violations of the health code which often result in death or illness. However, it is impractical and costly to mandate education to every food service worker. Instead, we advocate mandatory training of food service managers, who are responsible for the training and performance of their employees. (Source: Evaluating Food Manager Programs, Phillip Kneller, Western Carolina University)

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PA Food Manager Certification

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Page 2

The competitive, free enterprise system has proven effective in the delivery of food safety education that is cost effective, convenient and provides wide access to students.

To ensure accurate and standardized knowledge for all food service managers, we advocate standards for training to be set up by government. The basis for these standards must be unbiased, scientific research.

As we have reviewed the proposed rulemaking, our first concern is to increase the representation of public health, educational and medical experts on the Advisory Committee. We recommend the addition of at least 7 positions, to include the following: 3 positions for those with expertise in adult education and/or food manager training; 2 positions from those with medical background and/or medical license (M.D., R.D., R.N., etc.); 2 positions for those with public health backgrounds (R.S., MPH, etc).

Our second concern is that the law exempts establishments that sell only pre-packaged foods. This is contrary to the many food manager certification regulations already in existence in Philadelphia and most of the US. We believe that the rules should state that establishments that serve only "pre-packaged non-sterilized hazardous foods" should be exempt.

For example, a chicken sandwich or other pre-packaged, ready to eat food that is time-temperature abused can be lethal. Some packaging materials create a greater threat of foodborne illness, such as vacuum packaged smoked fish, which has been implicated in outbreaks of botulism.

Our third concern is that a proctor has only 30 days in which to deliver exam results to the state. This is impractical, as the three nationally recognized food manager certification exams usually require an average of 21-27 days to process exams and return the results to the trainers. We recommend that this period be lengthened to 45 days to allow ample time for mail delivery.

Our fourth concern is the extended compliance period (January 1, 2001), as at least half of all PA food service managers are already certified (Bucks, Chester, Montgomery and Philadelphia counties have required certification for years). Also, this extended period is inconsistent with most other jurisdictions, which average 2 years.

Food manager certification is relatively easy and fast to obtain. Most jurisdictions require between 8 and 16 hours of training including 2 hours for the exam. Almost all jurisdictions which require 16 hours, allow up to 50% of this training to be completed as home study. From this rule, it appears that the initial certification course must be 16 hours to encompass all the required curriculum, which could be accomplished through 8 hours of home study and 8 hours of classroom.

In addition, access to training is already widely available. HRC, in partnership with the Educational Foundation of the National Restaurant Association and the National Assessment Institute, is committed to providing access to virtually all Pennsylvania food service managers, regardless of language or learning challenge. To date, we have certified over 6,700 in Pennsylvania.

Since food manager certification can be quickly obtained, wide access is already available and about half of all food service establishments have a certified manager already, we strongly recommend that the compliance period be shortened to the national average of 2 years, to July 1, 1998. (Is it reasonable to give food managers over 4 years to take a 1 or 2 day class, while during this period preventable suffering and death continues?).

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PA Food Manager Certification

7/21/97

Page 3

Fifth, the recertification period is 5 years, which again is contrary to the national average and studies have shown that recertification every 3 years is most effective and is the recommended standard. (Sources: Report on Food Manager Certification, 1986, Conference for Food Protection, "Food Manager Certification" Dr. E. Julian, 1989.)

Last, we ask that food safety courses include the availability of Hepatitis A vaccine and other vaccinations that relate to foodborne disease as they become available (a vaccine for Hepatitis A from SmithKline Beecham has been available for about 2 years, and most foodservice managers are still unaware of it's availability).

We invite members of the legislature and the Advisory Committee and other stakeholders to call us or to attend one of HRC's food manager certification courses or we will arrange a private course in Harrisburg.

Thank you for the opportunity to contribute our expertise to help ensure that Pennsylvania's food manager certification program will be most practical and effective in reducing the serious problem of foodborne disease through education and certification.

Sincerely,



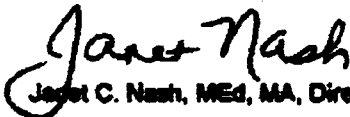
David Nash, President



Kathleen Johns, MS, RD, Supervisory Instructor



William Kropinicki, MD, Medical Advisor



Janet C. Nash, MEd, MA, Director of Adult Education



COUNTY OF ERIE

Department of Health
606 West Second Street
Erie, Pennsylvania 16507
814 / 451-6700
Fax: 814 / 451-6767

July 21, 1997

File: 1858
CC: Harbison

Judith M. Lynch
County Executive
Joseph Trzybinski
Director

ERIE COUNTY BOARD OF HEALTH
Stanley J. Zagorski
Vincent L. Jenco, D.O.
Howard A. Nadworny, M.D.
Geraldine D. Zum
Bonita K. Booker

Smith
Sandusky
Wyatte
Bereschak

Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408

Attention: Martha Melton

Dear Ms. Melton:

The Erie County Department of Health feels it is important to offer several comments to the Department of Agriculture regarding the recently published Pennsylvania Food Employee Certification Act. Our Department has administered various education courses to food handlers for over 30 years and for the past 7 years, we have developed and administered a highly successful and well accepted course to approximately 1,500 food handlers in Erie County.

With this background, we offer the following comments:

1. 76.1(d)(1) Does this include potentially hazardous pre-packaged foods? This is important for Section 76.3(a)(4).

If, as 76.1(d)(1) reads, a food establishment selling only commercially pre-packaged food (potentially hazardous and otherwise) is exempt, then a retail food store (as listed in 76.3(a)(4) that offers potentially hazardous food to the consumer could offer only commercially pre-packaged potentially hazardous food and be exempt.

As you can see, each statement, 76.1(d)(1) and 76.3(a)(4), must be clarified.

2. 76.2 - Definitions

Potentially Hazardous Food - This definition is not complete. It says nothing of eggs, some cut or peeled fruits and vegetables (example: melons), heat treated plants, raw seed sprouts, and garlic and oil mixtures that are not preserved.

Supervisory employee - What does "designated by the business owner" mean? Are they an employee? Do they have to work at the establishment? I think we would want to avoid a certified individual hiring themselves out to go to different establishments as the designated "certified supervisory employee."

This also effects Sections 76.3(b) and (e) — (b) says employee or person designated yet (e), says “certified supervisory employee.”

- There is no mention of the duties/responsibilities of this certified supervisory employee. These must be addressed, especially if as it says in 76.15(a), fines can be imposed on the certificate holder for regulatory violations. When is the facility responsible and when is the certificate holder responsible?

Since there are so many definitions for the places that are food related, it should be clear under the Public Eating and Drinking place definition that this is a food establishment, since food establishment is used throughout the document.

3. 76.5(a)

There is no mention of requirements of the individual teaching the approved curriculum. This person must have some credentials to be able to properly administer the information, be responsible for exams, and test score reporting, etc.

4. 76.5(b)

I assume one approved course can cover all 5 industry specific categories. Is this the case? 5 separate courses would not be efficient and so much overlap would occur anyway - 5 outlines would be needed, 5 tests, etc. Also, in these 5 categories, are seasonal and temporary food establishments included?

5. 76.5(d)(5) and (6)

I'm assuming if it's a homestudy course as in 5, then 6 covers the information you would send to the home-study person ---- this is not clear.

6. 76.5(f)

Once a course is approved 90 days before the 1st class is held, then must it be re-approved each time? The statement is unclear. The course should only have to be re-approved if there are changes made.

7. 76.7(g)(6) and (7)

Do these 2 statements cover the information that should be given regarding sewage disposal?

Ms. Martha Melton
page 3
July 21, 1997

8. 76.10(b)

When an applicant applies, it is not listed for them to send proof of their attendance at an approved course or that they passed the test. They must send this "official proof" to the department to make the certification process easier for the department. Just finding out when and where they attended class does not give proof.

This also affects 76.11(a)(6) which says the certificate will say the department has determined the person possesses adequate knowledge - how will you have proof of this?

9. 76.12(a)

I feel after 5 years, a re-examination should take place to show their continuing education efforts have been successful.


10. 76.18 Advisory Board.

The Board is seriously lacking membership by individuals in the field of public health and from regulatory agencies responsible for food establishments. There must be an equal representation from industry and regulatory/public health.

Members from regulatory/public health agencies are likely to have years of experience in developing and administering food safety educational programs and have a lot to offer to this certification process.

Please contact us if you want further information on our comments. Thank you for your consideration in this matter.

Sincerely,



Lisa DeFilippo
Food Certification Program

gr



COUNTY OF ERIE

Department of Health
606 West Second Street
Erie, Pennsylvania 16507
814/451-6700
Fax: 814/451-6767

July 21, 1997

ERIE COUNTY BOARD OF HEALTH
Stanley J. Zagorski
Vincent L. Jones, D.O.
Howard A. Nashawaty, M.D.
Geraldine D. Zorn
Bonnie K. Dozier

Judith M. Lynch
County Executive

Joseph Trappinelli
Director

97 JUL 21 10 00 AM

Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408

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Supervisory employee - What does "designated by the business owner" mean? Are they an employee? Do they have to work at the establishment? I think we would want to avoid a certified individual hiring themselves out to go to different establishments as the designated "certified supervisory employee."

Public Health is an Organized Community Effort Aimed at Preventing Disease,
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Martha Melton

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July 21, 1997

This also effects Sections 76.3(b) and (e) — (b) says employee or person designated yet (e), says "certified supervisory employee."

There is no mention of the duties/responsibilities of this certified supervisory employee. These must be addressed, especially if as it says in 76.15(a), fines can be imposed on the certificate holder for regulatory violations. When is the facility responsible and when is the certificate holder responsible?

Since there are so many definitions for the places that are food related, it should be clear under the Public Eating and Drinking place definition that this is a food establishment, since food establishment is used throughout the document.

3. 76.5(a)

There is no mention of requirements of the individual teaching the approved curriculum. This person must have some credentials to be able to properly administer the information, be responsible for exams, and test score reporting, etc.

4. 76.5(b)

I assume one approved course can cover all 5 industry specific categories. Is this the case? 5 separate courses would not be efficient and so much overlap would occur anyway - 5 outlines would be needed, 5 tests, etc. Also, in these 5 categories, are seasonal and temporary food establishments included?

5. 76.5(d)(5) and (6)

I'm assuming if it's a homestudy course as in 5, then 6 covers the information you would send to the home-study person ---- this is not clear.

6. 76.5(f)

Once a course is approved 90 days before the 1st class is held, then must it be re-approved each time? The statement is unclear. The course should only have to be re-approved if there are changes made.

7. 76.7(g)(6) and (7)

Do these 2 statements cover the information that should be given regarding sewage disposal?

Ms. Martha Melton
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8. 76.10(b)

When an applicant applies, it is not listed for them to send proof of their attendance at an approved course or that they passed the test. They must send this "official proof" to the department to make the certification process easier for the department. Just finding out when and where they attended class does not give proof.

This also affects 76.11(a)(6) which says the certificate will say the department has determined the person possesses adequate knowledge - how will you have proof of this?

9. 76.12(a)

I feel after 5 years, a re-examination should take place to show their continuing education efforts have been successful.

10. 76.18 Advisory Board.

The Board is seriously lacking membership by individuals in the field of public health and from regulatory agencies responsible for food establishments. There must be an equal representation from industry and regulatory/public health.

Members from regulatory/public health agencies are likely to have years of experience in developing and administering food safety educational programs and have a lot to offer to this certification process.

Please contact us if you want further information on our comments. Thank you for your consideration in this matter.

Sincerely,



Lisa DeFilippo
Food Certification Program

gr

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THE COUNTY OF CHESTER

TO: Independent Reg. Review Commission

FAX NUMBER: 717-783-2664

FROM: D. A. Jackson, R. S., Director
Bureau of Environmental Health Protection
610-344-6492 (Voice)
610-344-5934 (Fax)

PAGES: 5 (including this one)

NOTES: Attached is copy of letter of Nov. 20, 1996
to be attached to letter faxed to you
earlier today (7/18/97).



THE COUNTY OF CHESTER

Commissioners:
Karen L. Martynick, Chairman
Collin A. Haana
Andrew E. Dinniman

CHESTER COUNTY HEALTH DEPARTMENT
 Chester County Government Services Center
 601 Westtown Road, Suite 295
 West Chester, PA 19382-4543
 (610) 344-6237
 FAX (610) 344-6727



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November 20, 1996

Martha M. Melton
Sanitarian Program Specialist
PA Department of Agriculture
Bureau of Food Safety & Laboratory Services
2301 North Cameron Street
Harrisburg, PA 17110-9408

RE: Draft Regulations Food Employee Certification

Dear Ms. Melton:

Thank you for the opportunity, early in developmental process, to review and comment on the proposed regulations for Food Employee Certification. Drawing from our 20 years of experience in both initiating and administering a similar Certification Program, currently with 3,000 valid Certifications outstanding, we believe our comments and suggestions will be particularly helpful to you.

I should mention that due to the importance of these proposed regulations to the State-wide food protection program and with our active involvement in actually operating a certified food manager's program our letter incorporates the comments of John P. Maher, M.D., M.P.H., County Health Director, J. Andrew Worth, R.S., Environmental Health Supervisor for our Food Protection Program, Kelly Dempsey, Environmental Health Specialist II and Coordinator of our Certified Food Manager's Program and myself.

The Department of Agriculture is to be complimented on your decision to present a quality program with a meaningful course requirement. In order to carry out the intent of requiring a full-time person at each licensed facility, certified as having successfully passed a 15 hour course in food sanitation, we make the following comments and suggestions:

Section 83.2.

The definitions section, needs to be extensively revised. In many cases the definitions are imprecise or scientifically incorrect. Most of the terms defined here merely support the listing of required curriculum and are, therefore, unnecessary. The terms that do not pertain directly to the certification process or to the responsibilities of the Certified Supervisory Employee should not be included in these regulations. We believe most of the terms have a common use definition understood in the industry. As a comparison we note that the U.S. Public Health Service FDA Food Code does not list most of the definitions noted in the draft Chapter 83 document. Neither have we seen other State regulatory documents which have gone into such detail. An additional concern/problem is that while you include a broad range of definitions, the list remains incomplete. An example is the inclusion of some foodborne disease organisms (Salmonella & Staphylococcus) while not defining other serious foodborne disease organisms (Campylobacter, Vibrio cholera, toxic E coli, Giardia, Shigella, etc.). This is another

reason the number of definitions must be limited to only those needed for the certification process and the responsibilities of the Certified Supervisory Employee. If the definitions are to be retained which only relate to course curriculum, we could lend assistance in making them more precise and acceptable.

We would also suggest that an individual experienced in public health, especially in medical terminology, review the definitions relating to medical terms to determine correctness and completeness. We have several questions specifically relating to the definitions for: Asymptomatic, Bacteria, Communicable disease, Confirmed disease outbreak, E. coli, Fungi, Hepatitis A infection, Highly susceptible group, Intoxication, Salmonella enteritidis, virus, etc. Even though these definitions really are not necessary in the regulations as we have stated earlier, if they are used, they must be corrected.

Section 83.3.

This draft lacks the requirements and responsibilities that a Certified Supervisory Employee will have in the facility where their certificate is used. If an individual successfully completes the certification process and displays their certificate, but does not know his/her responsibilities, then the program's goal will not be achieved. Several years ago we discovered this shortcoming of our program and developed a list of duties and responsibilities which now are listed on the face of the certificates we issue. This is a critical concern both in ensuring that the goals of the certification program are met and in addressing the question of legal obligations which the legal profession will ask, especially after food outbreaks occur.

Section 83.3.(a)

The purpose of this section is not clear. Although other sections in this draft document refer back to these categories, at no point is the intent of these categories defined. Chester County has contemplated a limited certification category for retail food stores, however, with the rapid turnover of employees in the food service industry and with employees going from one category of establishment to another it would be too cumbersome to track employees where there was more than one category of certification. We also felt it would result in irritated managers when they discovered that their certificate did not apply to their new position.

We would also suggest that Section 83.3.(a) include an additional category for mobile and temporary food facilities. Such operations often pose considerable public health-communicable disease concerns.

Section 83.3.(b)

There appears to be inadequate provisions to require that each establishment maintain a certified employee. The wording, "or designate" in Section 83.3(b) is viewed as a loophole. Our regulations require that one manager in a supervisory capacity maintain certification. We interpret this to mean that this certified individual must work full-time in a supervisory capacity to properly carry out the required duties and responsibilities.

Section 83.4.

We are concerned that there is no way to become certified other than through an approved course. Individuals who are thoroughly knowledgeable in food safety and sanitation should be afforded the opportunity to show they are proficient in these areas without attending a course. We have for years used a Proficiency, Challenge Test to allow those individuals with experience and formal food service education to become certified. In addition the three training centers in Chester County concur that even with the ServSafe Course they use, the applicant does not have to attend any classes but rather can just show up to take their exam.

Section 83.5.(d) and Section 83.7.(c) through (i)

These sections provide much more detail than is normally provided in State regulations. By providing such detail it does not allow for variety or the ability to add new information as will occur in the future. You certainly need to list the subjects to be covered as you have done in Section 83.7.(a) and (b) but other than a short description of each topic we do not feel it is necessary to provide detailed descriptions. Neither do we feel it is necessary to describe the content of the application form for program approval as listed in Section 83.5.(d).

Section 83.6.

According to this section the certification examination must consist of no fewer than 100 questions to be approved. Most standard exams have between 60 and 85 questions, and therefore, could not be approved under the State program. This includes The Educational Foundation of the National Restaurant Association's ServSafe Course and the National Assessment's Certified Professional Food Manager Program. Most private companies and Act 315 Health Departments, which have mandatory certification programs in place, utilize one or both of these programs. It has been our opinion that the content of the test is more important than the number of questions on the test. Some tests may meet the 100 question requirement but do not adequately cover the critical control points of food safety and sanitation.

Sections 83.12. and 83.13.

It is understood from these sections that an individual holding a certificate needs to obtain 7.5 hours of approved continuing education; however, other than the statement in 83.13.(c)(2) that a course must address regulatory or food industry changes, updates or advancements, there are no curriculum guidelines. The statistics that Chester County has collected over the years indicate that a general review of food safety and sanitation issues is needed. This was the case in Chester County when our certification period was only two years. With the five year certification period the State has mandated it is even more important to provide a general review in addition to updating information.

Section 83.14.

To limit reciprocity only to other states as described in this section is unreasonable. There are four Act 315 Health Departments with Certification Programs in place, however, the draft regulation does not include anything about intra-state reciprocity. Additionally, there are at least 90 jurisdictions in the United States that have Certification Programs, many of which are located in states where there is no state program. We believe what is important is the content of the courses being taught not whether such courses are inter or intra-State Programs. We also do not believe this was the intent of the legislature when they passed the Food Employee Certification Act.

Section 83.17.

While this section describes the membership of the Advisory Board as appointed by the Secretary of Agriculture, we have grave concerns that the membership only consists of one member experienced in the field of public health. While we understand that the membership is described in the enabling legislation we would suggest that the Secretary seriously consider correcting this deficiency. As a program with direct public health ramifications it is important that public health interests be treated equally with the industry-political interests. The present make-up of the Advisory Board does not come close to satisfying this concern. It would also seem logical that one member be from an agency in Pennsylvania who has successfully operated such a program. This could be a great help to the other Advisory Board members and the Department. From experience we can tell you that this is an extremely difficult program to develop, initiate and coordinate. The development of the regulations is one of the easier tasks.

If you have any questions concerning our comments please feel free to contact me at (610)344-6492 or Fax me at (610) 344-5934.

Sincerely,



David A. Jackson, R.S., Director
Bureau of Environmental Health Protection

c: John P. Maher, M.D., M.P.H.
J. Andrew Worth, R.S.
Kelly Dempsey

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THE COUNTY OF CHESTER



COMMISSIONERS:
 Karen L. Martynick, Chairman
 Colin A. Hanna
 Andrew E. Dinniman

CHESTER COUNTY HEALTH DEPARTMENT
 Government Services Center
 601 Westtown Road, Suite 295
 West Chester, PA 19382-4543
 FAX: (610) 344-5934

Sewage/Wells (610) 344-6526
 Food/Vector (610) 344-6689
 Laboratory (610) 344-6439

Certified Food Mgr./Public Water (610) 344-5938
 Solid Waste Mgt./Recycling (610) 344-5937
 Weights & Measures/Consumer Affairs (610) 344-6150

July 18, 1997

Martha M. Melton
 Sanitarian Program Specialist
 PA Department of Agriculture
 Bureau of Food, Safety and Laboratory Services
 2301 North Cameron Street
 Harrisburg, PA 17110-9408

Post-R [®] Fax Note	7671	Date	7-18-97	# of pages	4
To	Independent Reg Review Com	From	D.A. Jackson		
Co./Dept		Co.	Chester Co Health		
Phone #		Phone #	610-344-6492		
Fax #	717-783-2664	Fax #	610-344-5934		

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RE: Proposed Chapter 76 - Food Employee Certification

Dear Ms. Melton:

We wish to provide the following comments concerning the proposed Chapter 76 - Food Employee Certification regulations as published in the June 21, 1997 issue of the Pennsylvania Bulletin.

Our comments, we believe, are important concerns that must be addressed if a successful State-wide food employee certification program is to be initiated in Pennsylvania. As you recall we have operated a successful certification program in Chester County for over 20 years. We were one of the first programs initiated in the United States and were recognized by FDA as one of 22 approved programs in the country. We presently have over 3,000 valid certifications outstanding. We are still one of the few in the country who have successfully incorporated the non-profit food service entities into our certification program. We believe our experience in initiating and operating a successful program can be helpful to you as you develop State-wide requirements and initiate your program.

This letter incorporates the comments of John P. Maher, M.D., M.P.H., County Health Director; J. Andrew Worth, Environmental Health Supervisor; Joseph Arvay, Assistant Environmental Health Supervisor and myself.

We include many of the same comments that were forwarded to you in our November 20, 1996 letter following your early submission of the initial draft of the regulations to us for review. Along this line we are quite dismayed that so few of our earlier suggestions were acted upon.

Our specific comments are as follows:

Chapter 76.2.

While the introductory overview section explains why the Department believes it is necessary to define such a long list of terms, we repeat our concern that such terms merely support the listing of required curriculum and are, therefore, unnecessary. The terms that do not pertain directly to the certification process or to the responsibilities of the Certified Supervisor Employee should not be included in these regulations. If such definitions are to be listed in regulations they would perhaps be more correctly listed in the separate State Food Code and its accompanying regulations although we note in

comparison that the U.S. Public Health Service FDA Food Code does not list most of the definitions noted in the draft Chapter 76 document.

We also have a great deal of difficulty with the correctness of many of the terms as defined. As we suggested earlier, several of the definitions are simply incorrect. As an example, Asymptomatic is not an individual "presenting no evidence of disease." Such an individual would be a well person. Asymptomatic should be defined as "neither causing nor displaying symptoms." An additional concern/problem is that while you include a broad range of definitions, the list remains incomplete. An example is the inclusion of some foodborne disease organisms while not including a good many others. If you are going to include medical definitions, we would suggest that the list and the definitions be reviewed by an epidemiologist with the PA Department of Health.

Similarly some of the technical terms must be reviewed for correctness using BOCA building codes and other reference literature. In addition, other extremely important terms (sewage, wastewater, vectors, refuse, solid waste, etc.) are not even mentioned. These are important subjects for all food employees to understand and be prepared to properly manage. They are common violations we consistently observe while making our inspections.

Chapter 76.3.

While the regulations specify requirements for food establishments, they do not address requirements for the Certified Supervisory Employees. This is a critical oversight. The proposed regulations are entitled, "Food Employee Certification" and yet no requirements are listed for these employees. A separate section of the regulations should be added to correct this oversight. Early on in our program we were asked by several certified managers to include such requirements not only in our regulations but on each certificate we issue. This strengthens the employee's ability to work with the owner and/or management in correcting violations that he or she observes.

In Subsection 76.3(a)(2) the wording should be changed to: "Food service that prepares and/or serves..."

While Section 76.3(a) lists the five (5) industry-specific categories of food establishments there are no specific certification requirements mentioned anywhere in the proposed regulations for each category. What is the purpose of these categories and what specific courses and hours are required for each category?

Chester County has contemplated a limited certification category for retail food stores, however, with the rapid turnover of employees in the food service industry and with employees going from one category of establishment to another it would be too cumbersome to track employees where there was more than one category of certification. We also felt it would result in irritated managers when they discovered that their certificate did not apply to their new position.

If you continue with categories, we would then suggest that an additional category be added for mobile and temporary food facilities. Such operations often pose considerable public health-communicable disease concerns.

Chapter 76.4.

There appear to be inadequate provisions to require that each establishment maintain a certified employee. The wording, "or designate" in 76.3.(b) is viewed as a loophole. Our regulations require that one manager in a supervisory capacity maintain certification. We interpret this to mean that this certified individual must work full-time in a supervisory capacity to properly carry out the required duties and responsibilities.

We are still concerned that there is no way to become certified other than through an approved course. Individuals who are thoroughly knowledgeable in food safety and sanitation should be afforded the opportunity to show they are proficient in these areas without attending a course. We have for years used a Proficiency, Challenge test to allow those individuals with experience and formal food service education to become certified. In addition, the three training centers in Chester County concur that even with the ServSafe course they use, the applicant does not have to attend any courses but rather can just show up to take their exam.

Chapter 76.5.(d) through Chapter 76.7.(b) through (h)

These sections provide much more detail than is normally provided in State regulations. By providing such detail it does not allow for variety or the ability to add new information as will occur in the future. You certainly need to list the subjects to be covered as you have done in Section 76.7.(a) but other than a short description of each topic we do not feel it is necessary to provide detailed descriptions. Neither do we feel it is necessary to describe the content of the application form for program approval as listed in Section 76.5.(d).

Chapter 76.7.

TEL: 610 344 5934 Jul 18, 1997
The previous draft included a requirement stating that a minimum of 15 hours of instruction followed by the minimum hours for each topic of instruction were necessary for certification. These requirements have unfortunately now been removed in the published draft. If anything should be included in the regulations it is a listing of the specific number of hours and topics to be considered in the certification program. This is the heart of the program and without listing such requirements there is really no need to even propose the regulations. If the intent is to make the requirements industry-specific, then a listing of hours and topics to be required for each category should be listed in the regulations.

Chapter 76.10.

We would suggest that the person conducting the training and the proctor of the examination be permitted to hand out the application form for submission to the Department.

Chapter 76.11.

We would suggest that the Certificate list the responsibilities of the certificate holder.

Chapter 76.12.

It is understood from these sections that an individual holding a certificate needs to obtain 7.5 hours of approved continuing education; however, other than the statement in 76.13.(c)(2) that a course must address regulatory or food industry changes, updates or advancements, there are no curriculum guidelines. The statistics that Chester County has collected over the years indicate that a general review of food safety and sanitation issues is needed. This was the case in Chester County when our certification period was only two years. With the five year certification period the State has mandated it is even more important to provide a general review in addition to updating information.

We are pleased that the number of hours (7.5) is listed as the requirement for recertification, however, we are confused as to why the number of hours for the initial certification is not listed.

In addition, does the Department plan to mail out renewal applications? This does not need to be listed in the proposed regulations but should be considered by the Department.

Chapter 76.14. and 76.17.

These two sections need to be combined. Reciprocity is discussed in both sections. 76.17.(c) and (d) are very confusing and seem to repeat what has already been stated in (a) and (b).

Chapter 76.18.

While this section describes the membership of the Advisory Board as appointed by the Secretary of Agriculture, we still have grave concerns that the membership only consists of one member experienced in the field of public health. While we understand that the membership is described in the enabling legislation, we would suggest that the Secretary seriously consider correcting this deficiency. As a program with direct public health ramifications it is important that public health interests be treated equally with the industry-political interests. The present make-up of the Advisory Board does not come close to satisfying this concern. It would also seem logical that one member be from an agency in Pennsylvania who has successfully operated such a program. This could be a great help to other Advisory Board members and the Department. From experience we can tell you that this is an extremely difficult program to develop, initiate and coordinate. The development of the regulations is one of the easier tasks.

Overall we do not believe that the level of detail described in this regulation is needed. As an example, the PA Department of Environmental Protection, Sewage Enforcement Officer's program operates successfully under State regulations which are quite brief.

As a reference document I have included a copy of my November 20, 1996 comment letter which addressed items of concern in your earlier draft of the proposed regulations.

If you have any questions concerning our comments please feel free to contact me at (610) 344-6492 or FAX me at (610) 344-5934.

Sincerely,



David A. Jackson, R.S., Director
Bureau of Environmental Health Protection

DAJ/edc

c: Independent Regulatory Review Commission
Helen Burns, PA Dept. of Health
County/City Environmental Health Directors
John P. Maher, M.D., M.P.H.
J. Andrew Worth, R.S.
Joseph Arvay

Original Faxed on July 18, 1997