

Regulatory Analysis Form

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REVIEW COMMENTS

(1) Agency

Department of Agriculture

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

2-145

IRRC Number: 2389

(3) Short Title

Food Employee Certification

(4) PA Code Cite

7 Pa. Code Chapter 76

(5) Agency Contacts & Telephone Numbers

Primary Contact: Martha M. Melton
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(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation XXX

Final Order, Proposed Rulemaking Omitted

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

No XXX

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The Food Employee Certification Act (3 Pa.C.S. §§ 6501-6510) (Act) requires that – effective July 1, 2004 – most food establishments in the Commonwealth have at least one “supervisory employee” who has undergone food safety training and passed a written examination evidencing food safety knowledge. The regulation will revise the standards and procedures pursuant to which the Pennsylvania Department of Agriculture (Department) would approve certification training programs and certify supervisory employees, and addresses recent amendments of the Act.

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

The Food Employee Certification Act (3 Pa.C.S. §§ 6501-6510) is the statutory authority for the regulation.

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

Section 4(g) of the Act (3 Pa.C.S.A. § 6504(g)) requires that the Department promulgate regulations describing food employee certification training programs by July 1, 2004.

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

The regulation is required under the Act (at 3 Pa.C.S. §§ 6504(g) and 6505). It also brings the current regulation into-step with changes to the Act wrought by two recent amendments: the act of December 20, 2000 (P.L. 934, No. 124) and the act of December 9, 2002 (P.L. 1495, No. 190). The overall effect of the regulation should be to help safeguard the health of persons who eat food originating from affected food establishments. The regulation should also serve to protect the health of employees working in such food establishments.

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

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

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

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

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

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

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

At least one supervisory employee in each affected food establishment shall be required to comply with the regulation. This requirement is imposed by the Act. It is estimated that there are approximately 100,000 such food establishments in the Commonwealth, and that this same number of supervisory employees will be required to undergo training and certification in accordance with the Act and the regulation. Of these persons, approximately 20,000 have already taken food safety training that will meet the requirements of the Act.

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

The Act, itself, was an industry-driven initiative. The proposed regulation has been reviewed and approved by the Food Employee Certification Advisory Board (Advisory Board).

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

There are approximately 100,000 food establishments in the Commonwealth. Most will be required to comply with the Act by July 1, 2004. The fee for certification of a supervisory employee is \$20 (See the Act, at 3 Pa.C.S. § 6509(b)). The minimum cost to the regulated community, therefore, will be approximately \$2,000,000. This does not include the costs of training the 100,000 supervisory employees. It is likely that - in many instances - the training will be offered for free or at cost by food industry organizations.

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

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

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

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

It is *estimated* the Department of Agriculture will incur clerical and record keeping costs of approximately \$30,000 in the year 2004 – the first year certification under the Act becomes mandatory. Certification is valid for 5 years, so the costs the Department expects to incur in subsequent years will involve clerical and record keeping expenses for new certifications and renewals of previously-issued certifications as they approach expiration.

Until 2004, the Department expects voluntary compliance with the regulation by food establishments to proceed on an even pace. The estimated costs to the Department are set forth in Answer No. 20.

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

2003-2004 2004-05 2005-06 2006-07 2007-08 2008-9

| * = not estimable | Current FY Year | FY +1 Year | FY +2 Year | FY +3 Year | FY +4 Year | FY +5 Year |
|-----------------------------|-----------------|------------|------------|------------|------------|------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated | * | * | * | * | * | * |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Savings | * | * | * | * | * | * |
| COSTS: | | | | | | |
| Regulated | * | 2 000 000 | * | * | * | * |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 15 000 | 30 000 | 30 000 | 30 000 | 30 000 | 30 000 |
| Total Costs | 15,000+ | 730,000 | 30,000+ | 30,000+ | 30,000+ | 30,000+ |
| REVENUE LOSSES: | | | | | | |
| Regulated | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Revenue Losses | 0 | 0 | 0 | 0 | 0 | 0 |

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

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

Food establishments are not *required* to comply with the Act or the regulation until July 1, 2004. By that date industry will have expended approximately \$2,000,000 (100,000 food establishments, multiplied by the \$20-per-certificate fee for certification of a supervisory employee) on certification fees. It is expected that many food establishments will voluntarily come into compliance with the Act and the regulation well in advance of that date. The cost of putting supervisory employees through approved certification training programs is not readily measurable.

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

This is a new program. Expenditures in the current FY are attributable to entities seeking certification in advance of the mandatory July 1, 2004 compliance date.

| Program | FY -3 | FY -2 | FY -1 | Current FY |
|-----------------------------|-------|-------|-------|--------------------|
| Food Employee Certification | 0 | 0 | 0 | \$15,000 (approx.) |
| | | | | |
| | | | | |
| | | | | |

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

Although there are no adverse effects expected as a result of promulgation of the regulation itself, the Act will require approximately 100,000 food establishments to incur the \$20-per-person fee for certification of supervisory employees, as well as any costs associated with obtaining required training for these individuals. The regulation will benefit public health and help bolster confidence in the Commonwealth's food production industry.

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

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

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

No alternative regulatory schemes were considered.

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

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

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

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

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

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

No.

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

No. In addition, since the final-form regulation is not substantively different than the proposed regulation, the Department did not have to review the final-form regulation with the Advisory Board.

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

Food establishments affected by the Act will have to retain certain records with respect to their certified supervisory employees. The Department will make standardized forms available to simplify these requirements to the extent practicable.

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

None.

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

Although the Department intends the regulation to take effect at the earliest date consistent with the requirements of the Regulatory Review Act, the Food Employee Certification Act requires that compliance with that statute or this regulation remain *optional* until July 1, 2004.

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

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

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

(Pursuant to Commonwealth Documents Law)

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

By: _____
(Deputy Attorney General)

DATE OF APPROVAL _____

Check if applicable
Copy not approved. Objections attached.

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

(AGENCY) _____

DOCUMENT/FISCAL NOTE NO. 2-145

DATE OF ADOPTION 4/23/04

BY Dennis C Wolff
DENNIS C WOLFF

TITLE
SECRETARY
Pennsylvania Department of Agriculture

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

BY Tanya C. Gable
5/6/04
DATE OF APPROVAL

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

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

Notice of Final Rulemaking

**Title 7 – AGRICULTURE
7 Pa. Code Chapter 76**

Food Employee Certification

FINAL RULEMAKING
DEPARTMENT OF AGRICULTURE
FOOD EMPLOYEE CERTIFICATION
[7 PA. CODE CH. 76]

The Department of Agriculture (Department) hereby revises Title 7 of the Pennsylvania Code by amending Chapter 76 (relating to food employee certification) (Chapter 76) to read as set forth in Annex A.

Statutory Authority

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

The Act also requires that regulations be promulgated with the approval of the Food Employee Certification Advisory Board (Advisory Board). The Advisory Board approved this proposed regulation at its October 6, 2003 meeting. Although that document was subsequently revised in response to comments received from the public and the Independent Regulatory Review Commission, the revisions were non-substantive and did not require further review by the Advisory Board.

Purpose

Chapter 76 took effect in October of 1999. The Act was subsequently amended twice – first by the act of December 20, 2000 (P.L. 934, No. 124), and then by the act of December 9, 2002 (P.L. 1495, No. 190). The purpose of the proposed regulation is to implement the statutory changes wrought by these amendments.

The Act was the product of an industry-driven initiative to establish minimum food safety training requirements to be met by at least one supervisory employee in most food establishments in the Commonwealth.

Act 124 of 2000 revised the Act by: (1) deleting the requirement that these food safety training requirements be "industry-specific;" (2) extending the date by which food establishments must come into compliance with the Act by two years (from July 1, 2001

to July 1, 2003); (3) exempting certain food establishments operated by charitable and not-for-profit organizations from the requirements of the Act; and (4) requiring the Department to develop a food safety training program for those organizations that - although exempt from the requirements of the Act - elect to voluntarily seek certification under that statute.

Act 190 of 2002 revised the Act by: (1) extending the date by which food establishments must come into compliance with the Act by *another* year (from July 1, 2003 to July 1, 2004); (2) expanding the membership of the Advisory Board; and (3) requiring the Department to promulgate regulations (approved by the Advisory Board) by July 1, 2004, establishing training programs consistent with the revised Act.

The Act requires that the Department consider a number of factors in writing the regulation, among them: (1) the existence and operation of Department-approved employee training programs on safe food handling; (2) the fact that some food establishments engage in only the *limited* handling of potentially hazardous food; (3) the number of hours necessary to train food establishment employees to handle food safely, with consideration of the “scope” of the food establishment’s business; and (4) the demonstration necessary for the Department to be satisfied that a particular supervisory employee is proficient in the safe handling of food. The Department has given consideration to all of these factors in the drafting of this final-form regulation.

Need for the Regulation

The regulation is needed in order to implement the changes to the Act wrought by Act 124 of 2000 and Act 190 of 2002.

The Department is satisfied of the need for the proposed regulation, and believes the document is consistent with the principles outlined in Executive Order 1996-1, “Regulatory Review and Promulgation.”

Comments

Notice of Proposed Rulemaking was published at 34 *Pennsylvania Bulletin* 831 (February 14, 2004), and provided for a 30-day public comment period.

Comments were received from the Independent Regulatory Review Commission (IRRC), the Director of Outdoor Education and Group Rentals for the South Mountain YMCA – Camp Conrad Weiser Outdoor Center (South Mountain YMCA), Goodtime Amusements, the Chester County Health Department (CCHD); the Allegheny County Health Department (ACHD); the Pennsylvania Food Safety Alliance (PAFSA), with members who represent Commonwealth agencies abstaining from the comment process; and the Pennsylvania Food Merchants Association (PFMA). The Department’s response to these comments follows:

Comment 1: The South Mountain YMCA acknowledged that the Act specifically exempts certain tax-exempt and not-for-profit organizations from having to comply with the certification requirements set forth in that statute, and questioned whether this serves the overall cause of food safety. Although the Act allows such otherwise-exempt organizations to *voluntarily* comply, the commentator believes compliance should be mandatory.

Response: The Department understands the Commentator's concerns, but is constrained by the clear language of the Act in this regard. The regulation cannot undo the specific exemptions set forth in the Act. The Act exempts certain food establishments from compliance (at 3 Pa.C.S.A. § 6510), and this exemption cannot be undone by regulation.

Comment 2: CCHD noted that the proposed regulation does not prescribe duties and responsibilities for a person who becomes a certified supervisory employee. The commentator described the responsibilities it imposes on a "certified food manager" within its jurisdiction, and suggested the final-form regulation should impose similar requirements.

Response: The Department looks to the Act – the legislation underlying this regulation – for guidance as to the duties of a certified supervisory employee. The Act does not impose any specific responsibilities upon a certified supervisory employee (other than to maintain certification), and the Department will not impose these duties through regulation. In addition, the basic duties the commentator imposes on its "Certified Food Managers" are consistent with duties imposed under the Department's Food Code, at 7 Pa. Code Chapter 46.

Comment 3: IRRC reviewed proposed § 76.2 (relating to definitions), and noted that several defined terms that were proposed for deletion were used elsewhere in the document, and suggested these definitions be retained unless the Department could explain why they are not needed. The defined terms involved are "food contact surface," "HACCP," "retail food store" and "water activity."

Response: The Department has elected to retain the referenced defined terms in the final-form regulation.

Comment 4: IRRC suggested the defined term "food code" be deleted from § 76.2 in the final-form regulation, since it is not used in the body of the regulation.

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

Comment 5: PAFSA and ACHD considered the definition of the phrase "limited handling of potentially hazardous foods" in proposed § 76.2, and recommended the definition be limited to the handling of a *single* potentially hazardous food. The

commentator also suggested that "limited handling" should only include foods that are heated for immediate consumption (and exclude food that are heated and then held hot).

Response: The Department believes the proposed definition is adequate, and does not perceive a need to limit the term to only a single type of food. The Department believes it is the *limited handling* of the potentially hazardous food handled by a food establishment that determines the relative risk of that activity, rather than the *number of different types* of potentially hazardous food handled. With respect to the suggestion that the definition exclude foods that are heated and then held hot (as opposed to being immediately consumed), the Department declines to implement this suggestion.

Comment 6: IRRC recommended proposed § 76.3(b) (relating to requirements for food establishments) be revised by replacing the phrase "unless one of the following is accurate" with "unless one of the following applies."

Response: The recommendation has been implemented in the final-form regulation.

Comment 7: CCHD noted that the proposed regulation allows for a certified supervisory employee to be certified in a number of categories – depending upon the type of food establishment and food activity involved. These categories are the general, process-specific, modified and non-profit certification categories, and are referenced throughout the proposed regulation, beginning with proposed § 76.3(b). CCHD references its long-standing and well-regarded food safety program, and objects to the proposed regulation allowing for certification in anything but the "general." certification category. The commentator believes that all of the regulated community should have the same level of food safety training. It also believes that the Department will have difficulty tracking compliance with the requirements of the proposed regulation, as food employees change jobs or food establishments change their operations such that another certification category is applicable to that operation.

Response: The Department appreciates this well-reasoned comment. The Department believes that the most recent amendments to the Act make clear the intention of the General Assembly that not-for-profit food establishments and food establishments involving only the limited handling of potentially hazardous food be given special consideration in preparing the final-form regulation, and that they be subject to standards that are somewhat less-strict than those imposed upon other food establishments. The Department agrees that having four different certification categories will present a more formidable paperwork and enforcement task, but believes it can handle this and, moreover, believes it is constrained by the current language of the Act to establish and regulate different certification categories.

Comment 8: Goodtime Amusements (through Irvin L. Good, Jr.) noted that proposed § 76.3(c) would allow a new food establishment to remain open for up to 90 days before it would have to have a certified supervisory employee, and suggested this grace period be deleted.

Response: The Department declines to implement this suggestion. The Department maintains that the referenced regulatory provision is justified under the language of the Act. The Act provides (at 3 Pa.C.S.A. § 6503(d)) that a supervisory employee has up to 90 days within which to pass the test requisite to becoming a certified supervisory employee. It also provides (at 3 Pa.C.S.A. § 6504(d)) that food establishments that are not in compliance with the Act because of employee turnover have a grace period of three months from the date of loss of a certified supervisory employee to come back into compliance with the Act. Against this backdrop, the Department believes it is reasonable and consistent with the Act for the referenced regulatory provision to allow a new food establishment 90 days within which to come into compliance with the requirements of the Act.

Comment 9: Goodtime Amusements reviewed proposed § 76.3(d) and recommended the provision be revised to allow a food establishment 45 days – rather than three months – within which to replace a certified supervisory employee lost through employee turnover.

Response: The Department cannot implement this recommendation, since the referenced three-month period is prescribed by the Act (at 3 Pa.C.S.A. § 6504(d)).

Comment 10: In the context of its review of proposed § 76.4 (relating to eligibility to apply for certification), PFMA recommended that persons be allowed to take “challenge examinations” to demonstrate their food safety knowledge without having to first complete an approved certification training course.

Response: The Act (at 3 Pa.C.S.A. § 6504(b)) provides as follows: “No certificate shall be issued unless the applicant has successfully completed a training course and passed an examination recommended by the advisory board and approved by the department.” Although a training course must precede the examination, an organization would be free to develop a brief training course that that would only be offered to persons with specific credentials or experience in the area of food safety. That course could be comparatively shorter than other certified training courses. For this reason, although the Department is not free to adopt the commentator’s recommendation, the desired objective might be reached through the development and approval of such a training course.

Comment 11: IRRC requested that the phrase “are accurate” in proposed § 76.5(b)(2)(iii) (relating to certification training programs: obtaining the Department’s approval) be replaced with “apply.”

Response: The requested change has been made in the final-form regulation.

Comment 12: IRRC reviewed proposed § 76.5(b)(2)(iv)(B), which describes the standards pursuant to which the Department would approve a certification training program in the nonprofit certification category. The commentator suggested that - with respect to such a program developed and administered by an entity other than the Department – the proposed requirement that the program “meet the requirements referenced in clause (A)” was too expansive, given that clause (A) contains a reference to statutory authority (section 4(g)(2) of the act) that is only applicable to the Department. IRRC suggested that the Department might have intended this requirement to be only that the course meet the course requirements set forth in § 76.7(b) (relating to certification training programs: Food safety protection and training standards).

Response: The commentator is correct, and the Department has revised the referenced provision in the final-form regulation to reflect that nonprofit certification category training programs must meet the course content requirements set forth in § 76.7(b).

Comment 13: PAFSA and ACHD noted that proposed § 76.5(d)(4) would allow for certification training course examinations *other* than examinations that have been accredited by the Conference for Food Protection (CFP). The commentator recommended that – with respect to the general certification category - the final-form regulation only allow CFP-accredited examinations, and offered that this is the only way to “assure that the exams are valid and legally defensible.”

Response: The Department declines to implement this recommendation for several reasons. Initially, the Department notes that the language with respect to which the comment is offered is part of the current regulation, rather than new proposed regulatory language. The Department notes that the Act does not prescribe CFP-accredited examinations, but defers to the Department – in consultation with the Food Employee Certification Advisory Board (Advisory Board) – to develop adequate training programs. The Department intends the regulation to afford persons a measure of flexibility in developing and administering examinations. Any proposed certification program examination will be carefully reviewed by the Department and the Advisory Board. Any such examination that is approved by the Department and the Advisory Board, in accordance with the Act, will be valid and legally defensible.

Comment 14: PAFSA and ACHD reviewed proposed § 76.5(d)(7) and, as in the preceding comment, recommended that only CFP-accredited examinations be allowed in home study courses in the general certification category.

Response: The Department references its response to Comment 13, immediately above.

Comment 15: IRRC reviewed proposed § 76.7 (relating to certification training programs: Food safety protection and training standards), and offered its opinion that the Act *requires* the Department to establish, through regulation, the appropriate minimum

number of hours of instruction necessary "... to prepare employees for safe food handling due to the food establishment's scope of business." IRRC noted that the proposed regulation would delete the specific minimum-hour-of-instruction requirements set forth in the current regulation, and asked how the regulation will be in compliance with the Act if this is done.

Response: The Department does not read the Act as rigidly requiring that the final-form regulation specify a minimum number of hours of instruction to be given on various topics as part of an approved certification training program. The General Assembly has given the Department the authority and responsibility to adopt a regulation that *provides for the consideration* of whether a minimum number of hours is necessary, but does not require that the regulation ultimately adopted under that authority *establish* such a minimum-hour standard. The Department believes that the course syllabus and the written examination requirements are – in combination – entirely adequate to ensure that persons who take a certification training course and pass the written examination at the conclusion of that class possess adequate food safety knowledge with respect to the certification category of the course (whether the certification training category is general, process-specific, modified or nonprofit). To the extent that the proposed regulation might not have adequately reflected that the Department had considered the minimum number of hours necessary for this training, though, the Department has added a sentence to § 76.5 that more clearly constitutes a provision considering the number of hours necessary for certification.

Comment 16: PAFSA and ACHD offered comments with respect to proposed § 76.8 (relating to certification examination requirements). The commentators believe that an examination administered in the "modified" certification category should be multiple choice, and that language should be added to specify that the subject matter of the examination questions should relate specifically to the course content.

Response: The Department does not perceive a need to limit the referenced examination to a multiple-choice format. The Department will keep these comments in mind, though, as it administers the regulation, and will revisit this question if it appears there is some problem that could be remedied by requiring the examination to be in multiple-choice format. As far as the comment regarding the examination subject matter is concerned, the Department believes the introductory paragraph in § 76.8 adequately links the examination content of the particular category of certification training course involved. That section provides as follows: "The examination shall adequately test food protection knowledge with respect to the certification category of the approved certification training course."

Comment 17: ACHD noted that proposed § 76.10(a) (relating to applying for certification) would allow a person who has taken an approved certification training course in the past to apply to the Department for certification as long as the certification examination was administered within five years preceding the application date. Given that the Act provides (at 3 Pa.C.S.A. § 6504(f)) that

certification last for five years, the commentator offered that a person could go nearly 10 years without having to take another training course.

Response: The commentator is correct. The Department offers two considerations in response. First, it should be noted that the referenced 5-year window is offered as *new* regulatory language, and that the current regulation places no time limit whatsoever on the maximum allowable interval between the date of completion of a certification training course and the date of application for certification. The proposed 5-year limit, therefore, is a move in the direction espoused by the commentator. Second, it is significant to consider that once a person passes an approved certification training course and is certified by the Department, the *only* continuing education requirement is that the certified supervisory employee attend an approved continuing education course and submit an application for renewal of certification to the Department at intervals of no greater than five years. The Act (at 3 Pa.C.S.A. § 6504(f)) states that there is to be no written examination required for this recertification. Given that, once certification is granted, the requirements for continuing education are mere attendance at a continuing education course without being tested on a mastery of the course material, the Department believes the referenced five-year application window is justifiable.

Comment 18: Goodtime Amusements asked whether the Department will publish a list of the other States with respect to which it enters into the reciprocal agreement described in proposed § 76.14 (relating to reciprocity with other states).

Response: The Department will publish a list of such States in the *Pennsylvania Bulletin* and provide a link to this list on its website (www.agriculture.state.pa.us). In addition, it will disseminate this list among groups representing the various segments of the food and restaurant industries in this Commonwealth.

Comment 19: Goodtime Amusements reviewed proposed § 76.19 (relating to civil penalties) and opined that the penalties prescribed by that section are too harsh. The commentator also offered that a "... \$300 fine for a hair net missing would be harsh."

Response: Since the referenced civil penalty range is prescribed by the Act (at 3 Pa.C.S.A. § 6508), the Department cannot change it through regulation. With respect to the comment regarding a \$300 civil penalty for a missing hair net, the Department offers that the referenced civil penalties can only be imposed with respect to violations of the provisions of the Act or its attendant regulations. Although the Act requires food establishments to have a certified supervisory employees under certain circumstances, it does not require that these certified supervisory employees implement any specific food safety or food sanitation practices. For this reason, the "missing hair net" referenced by the commentator could never be the basis for a civil penalty under the Act or the regulation (although such conduct might constitute a violation of the Food Code – 7 Pa. Code Chapter 46).

Fiscal Impact

Commonwealth: The regulation will impose some costs upon the Commonwealth. The Department estimates its costs in administering the certification requirements imposed by the Act at \$15,000-per-year until July 1, 2004 (the date beyond which compliance with the certification requirements becomes mandatory), and \$30,000-per-year starting July 1, 2004.

Political Subdivisions: The regulation will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector: The regulation will impose no costs and have no fiscal impact upon the private sector. The changes to the Act accomplished by Act 124 of 2000 and Act 190 of 2002 relieve food establishments operated by certain exempt charitable and not-for-profit organizations from the cost of training and certification a supervisory employee. These cost savings cannot be readily quantified, and are the product of the referenced legislation, rather than the proposed rulemaking. The overall cost of compliance with the certification requirements imposed by the Act is estimated at \$2,000,000 (approximately 100,000 affected food establishments, multiplied by the minimum \$20 fee prescribed by the Act). This figure excludes the costs of obtaining the training required as a prerequisite to certification.

General Public: The regulation will impose no costs and have no fiscal impact upon the general public. Although food establishments may incur some costs in obtaining certification for a supervisory employee, these costs are expected to be modest. Additionally, since the Act has been amended to exempt more types of food establishments from its requirements, these exempt food establishments shall no longer be required to bear the costs of compliance.

Paperwork Requirements

The regulation is not expected to have an appreciable impact upon the Department's paperwork volume.

Sunset Date

There is no sunset date for the regulation. The Department will review the efficacy of this regulation on an ongoing basis.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Food Safety and Laboratory Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Martha M. Melton. Telephone: (717) 787-4315.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a), the Department submitted a copy of the Notice of Proposed Rulemaking published at 34 *Pennsylvania Bulletin* 831 (February 14, 2004) on February 4, 2004 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with § 5(b.1), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

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

This final-form regulation was approved or deemed approved by the House Agricultural and Rural Affairs Committee on _____, 2004, was approved or deemed approved by the Senate Agriculture and Rural Affairs Committee on _____, 2004, and was approved by the Commission on _____, 2004.

Findings

The Department of Agriculture finds the following:

1. Public notice of its intention to adopt the regulation encompassed by this Order has been given under §§ 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.
2. A public comment period was provided as required by law and all comments received were considered.
3. The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 34 *Pennsylvania Bulletin* 831 (February 14, 2004).
4. The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

Order

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

1. The regulations of the Department of Agriculture at 7 Pa. Code Chapter 76 (relating to food employee certification) are amended as set forth at Annex A hereto.
2. The Secretary of Agriculture shall submit this Order, 34 *Pennsylvania Bulletin* 831 (February 14, 2004) and Annex "A" hereto to the Office of General Counsel and to the Office of Attorney General for approval as required by law.
3. The Secretary of Agriculture shall certify this Order, 34 *Pennsylvania Bulletin* 831 (February 14, 2004) and Annex "A" hereto and deposit them with the Legislative Reference Bureau as required by law.
4. This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Annex A

TITLE 7. AGRICULTURE

PART III. BUREAU OF FOOD SAFETY AND LABORATORY SERVICES

CHAPTER 76. FOOD [EMPLOYEE] EMPLOYEE CERTIFICATION

Sec.

- 76.1. Compliance.
- 76.2. Definitions.
- 76.3. Requirements for food establishments.
- 76.4. Eligibility to apply for certification.
- 76.5. Certification training programs: Obtaining the Department's approval.
- 76.6. Certification training programs: Audit by Department.
- 76.7. Certification training programs: Food safety protection and training standards.
- 76.8. [Format of a certification examination] Certification examination requirements.
- 76.9. Reporting results of a certification examination.
- 76.10. Applying for certification.
- 76.11. Certificate.
- 76.12. Renewal of certification.
- 76.13. Obtaining Departmental approval of a continuing education course.
- 76.14. Reciprocity with other states.

- 76.15. Suspension or revocation of certification.
- 76.16. Contacting the Department.
- 76.17. Preemption and local governmental authority.
- 76.18. [Advisory Board.] Reserved.
- 76.19. Civil penalties.

§ 76.1. Compliance.

(a) *Mandatory compliance.* On or after [July 1, 2001] July 1, 2004, a food establishment shall comply with the act and this chapter, unless it is exempt under subsection (d).

(b) *Interim compliance optional.* A food establishment need not comply with the act or this chapter until [July 1, 2001] July 1, 2004, but is encouraged to do so in advance of that date.

(c) *Benefit of interim compliance.* If a food establishment that voluntarily complies with the act and this chapter is the subject of an action to recover fines or penalties for a violation of the Food Act, and the violation occurs prior to [July 1, 2000] July 1, 2004, the voluntary compliance of the food establishment will be considered a mitigating factor in determining whether the food establishment shall be assessed more than the minimum fine or civil penalty required by law.

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

* * * * *

(4) A food establishment managed by an organization which is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)).

(5) A food establishment managed on a not-for-profit basis by an organization which is a volunteer fire company or an ambulance, religious, charitable, fraternal, veterans, civic, agricultural fair or agricultural association or any separately chartered auxiliary of those associations.

(6) A food establishment managed by an organization which is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis.

§ 76.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless otherwise defined in [the most current FDA Food Code] Chapter 46 (relating to food code):

Act--3 Pa.C.S. Chapter 65 (relating to the Food [Employee] Employee Certification Act).

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

[Adulteration--An action that creates adulterated food.]

Advisory Board or Board--The Food [Employee] Employee Certification Advisory Board.

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

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

[*Asymptomatic*--Presenting no symptoms of disease.]

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

* * * * *

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

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

[*Bleach*--Sodium hypochlorite, a chemical sanitizer.]

CFP or Conference for Food Protection-- An independent, National voluntary nonprofit organization to promote food safety and consumer protection.

(i) Objectives of the organization include identifying and addressing food safety problems and promoting uniformity of regulations in food protection.

(ii) Participants include Federal, State, and local regulatory agencies, several universities, test providers, certifying organizations, consumer groups, food service and retail store trade associations and operators.

[*CIP or cleaned in place--*

(i) Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(ii) The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place cleaning without the use of a CIP system.]

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

* * * * *

*Certification category--*A designation of one of the four types of Department-approved certification training programs, indicating the depth of food safety training received by a person who successfully completes such a program. The four certification categories are as follows:

(i) General certification category.

(ii) Process-specific certification category.

(iii) Modified certification category.

(iv) Nonprofit certification category.

Certified supervisory [employe] employee--A supervisory [employe] employee holding a valid certificate.

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

* * * * *

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

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

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

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

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

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

* * * * *

[*Detergent*--A cleaning agent.]

[Easily cleanable--

(i) A characteristic of a surface that:

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

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

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

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

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

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

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

[*FDA Food Code*--A publication of recommendations by the United States Food and Drug Administration (FDA) for safeguarding public health and ensuring safe food.]

* * * * *

Food Code Chapter 46.

~~[*Food contact surface*--One of the following:~~

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

* * * * *

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

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

[*Foodborne disease outbreak*--The occurrence of two or more cases of a similar illness resulting from ingestion of a common food.]

* * * * *

[*Fungi*--A division of lower plant life which includes yeasts, molds, mildew and mushrooms.]

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

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

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

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

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

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

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

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

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

Limited handling of potentially hazardous foods--Food handling activities that are limited to the placement of a potentially hazardous food on or into a warming, heating or cooking unit. The term includes such activities as placing a hot dog on a roller, placing a pizza in a cooking/warming unit or warming a pre-made sandwich in a microwave oven.

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

[*MSDS or Material Safety Data Sheet*--A data sheet supplied by manufacturers of hazardous chemicals which gives proper labeling of the product, hazard warnings and the name of the manufacturer.]

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

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

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

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

[*Pathogenic organism*--A disease-producing organism.]

* * * * *

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

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

[*Potable water*--Safe drinking water as defined in the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1--721.17).]

* * * * *

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

* * * * *

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

[*Ready-to-eat food*--

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

(ii) The term includes:

(A) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food.

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

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

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

[*Reduced oxygen packaging*--

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

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

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

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

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

[*Sanitization*] Sanitizing--The application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which

is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

* * * * *

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

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

Supervisory [employee] employee--An owner or a person employed by or designated by the business owner to fulfill the requirements of the act, and who has supervisory authority and is responsible for the storage, preparation, display or serving of foods to the public in establishments regulated by the Department or local health organizations.

[*Temperature danger zone*--The temperature range which is favorable for the growth of many types of pathogenic organisms in potentially hazardous foods.]

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

* * * * *

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

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

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

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

{*Water activity*--A measure of the free moisture in a food. The term is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol AW_w .}

§ 76.3. Requirements for food establishments.

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

(1) A food processor that manufactures potentially hazardous foods.

(2) A food service that prepares potentially hazardous foods for the consumer, or serves potentially hazardous foods to the consumer, or both.

(3) A bakery that processes potentially hazardous foods.

(4) A retail food store that offers potentially hazardous food that is not exempt under § 76.1(d) to the consumer.

(5) A frozen dessert manufacturer.]

General requirement. A food establishment that is not exempt from compliance under § 76.1(d) (relating to compliance) shall comply with the act and this chapter.

(b) *Certified supervisory [employee] employee.* A food establishment shall employ or designate at least one certified supervisory [employee who is certified with respect to the

industry-specific category of the food establishment. If a food establishment falls within more than one of the industry-specific categories in subsection (a), the food establishment shall employ or designate one or more certified supervisory employees so that, in the aggregate, there is a certified supervisory employee who is certified with respect to each of the applicable industry-specific categories of the food establishment] employee who holds a valid certificate issued by the Department under authority of the act and this chapter. The certificate shall be in the general certification category unless one of the following is accurate APPLIES:

(1) The food establishment engages only in one or more specific, identified food processing activities (such as making cider or preparing frozen desserts), in which case a certificate in the process-specific certification category, pertinent to the processing conducted at the food establishment, shall suffice.

(2) The food establishment's personnel engage only in the limited handling of potentially hazardous foods (such as persons who handle food products that do not require any preparation by the food establishment other than to place the food on or in a cooking or warming unit), in which case a certificate in the modified certification category, pertinent to the food handling conducted at the food establishment, shall suffice.

(3) The food establishment is a nonprofit entity that, although otherwise exempt from compliance under § 76.1(d) voluntarily seeks certification under section 4(c)(2) of the act (relating to certification of employees), in which case a certificate in the nonprofit certification category shall suffice.

* * * * *

(d) *[Employee] Employee turnover*. If a food establishment loses its only certified supervisory [employee] employee through [employee] employee turnover or for any other reason, the food establishment shall comply with subsection (b) within 3 months of the date it lost its previous certified supervisory [employee] employee.

(e) *Certification records*. A food establishment shall maintain, at the food establishment site, a list of certified supervisory [employees] employees under its employment during the last 4 months including: name, certificate number, certification category, issuance date, expiration date, date employment began and date employment terminated.

* * * * *

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

(h) *Return of certificate*. A certificate is the property of the Department and is issued to the individual person identified on its face. A food establishment shall promptly deliver the certificate to a certified supervisory [employee] employee who leaves the employ of the food establishment or who otherwise ceases to be a certified supervisory [employee] employee with respect to that establishment.

§ 76.4. Eligibility to apply for certification.

(a) *Training program required*. A person shall successfully complete an approved certification training program [and obtain a score of 70% or higher on an approved certification examination], including a certification examination, in order to be eligible to apply to the Department for certification.

(b) Timeliness of training. A person shall not be eligible to apply to the Department for certification unless the certification examination was administered within 5 years preceding the date the application is delivered to the Department.

(c) Exception to examination requirement. Subsection (a) notwithstanding, a certification examination shall not be required where a person is applying for certification in the nonprofit certification category.

§ 76.5. Certification training programs: Obtaining the Department's approval.

* * * * *

(b) *General requirements for approval.*

(1) Approval of program. The Department will approve a certification training program if it [addresses at least one industry-specific category of food establishment described in § 76.3(a) (relating to requirements for food establishments),] meets the food safety protection and training standards described in § 76.7 (relating to certification training programs: Food safety protection and training standards), fits within one of the certification categories described in paragraph (2) and has been recommended for approval by the Advisory Board. [A single certification training program may be approved with respect to more than one industry-specific category of food establishment.]

THE DEPARTMENT'S APPROVAL OF A CERTIFICATION TRAINING PROGRAM WILL NOT BE CONTINGENT UPON ANY MINIMUM NUMBER OF HOURS OF INSTRUCTION, IN LIGHT OF THE OTHER REQUIREMENTS FOR CERTIFICATION TRAINING PROGRAM APPROVAL DESCRIBED IN THIS SECTION.

(2) Certification categories. The Department may approve a certification training program in one of four certification categories. These categories, and the requisites for inclusion of a certification training program within each, are as follows:

(i) General certification category. The Department will approve a certification training program in the general certification category if one of the following applies:

(A) The training program addresses the topics set forth in § 76.7(a).

(B) The training program is a Federally-mandated HACCP training program for juice, seafood, meat or poultry.

(ii) Process-specific certification category. The Department will approve a certification training program in the process-specific certification category if BOTH OF the following apply:

(A) The subject matter of the training program relates to one or more specific, identified food processing activities (such as making cider or preparing frozen desserts).

(B) The training program addresses the topics in § 76.7(a) in a manner specifically directed to the food processing activities that are the identified subject matter of the training program.

(iii) Modified certification category. The Department will approve a certification training program in the modified certification category if both of the following are accurate APPLY:

(A) The subject matter of the training program is addressed to persons who handle potentially hazardous food on only a limited basis (such as persons who handle food

products that do not require any preparation by the food establishment other than to place the food on or in a cooking or warming unit).

(B) The training program addresses the topics in § 76.7(a) in a manner specifically directed toward persons who handle potentially hazardous food on only a limited basis, and in a less-comprehensive manner than a certification training program in the general certification category.

(iv) Nonprofit certification category. The Department will approve a certification training program in the nonprofit certification category if either of the following apply:

(A) The training program is developed and administered by the Department under authority of section 4(g)(2) of the act (relating to certification of employees), and meets the course content requirements in § 76.7(b).

(B) The training program is developed and administered by an entity other than the Department, and meets the requirements referenced in clause (A) COURSE CONTENT REQUIREMENTS IN § 76.7(b).

* * * * *

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

* * * * *

(2) A course syllabus demonstrating that the program would meet the [minimum hour and] course content requirements in § 76.7.

(3) [The industry-specific category or categories of food establishment, as described in § 76.3(a) (relating to requirements for food establishments), to be addressed by the

certification training program] A designation of the certification category (whether general, process-specific, modified or nonprofit), as described in subsection (b)(2), with respect to which approval of the training program is sought.

(4) One of the following:

(i) A copy of the examination to be administered at the conclusion of the certification training program, together with an answer key for that examination, if these documents are available.

(ii) The name of the CFP-accredited examination to be administered at the conclusion of the certification training program.

* * * * *

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

* * * * *

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

(a) [*Minimum hours of instruction/overview of topics.* A certification training program shall consist of at least 15 hours of instruction relevant to the industry-specific category with respect to which certification is sought. As described in detail in subsections (b)--(h), a] Content in general. A certification training program in the general certification category, the process-specific certification category or the modified certification category shall contain instruction in the following topics [for the minimum hours indicated]:

- (1) Foodborne illness[: 2 hours] .
- (2) Time and temperature[: 2 hours] .
- (3) Relationship between personal hygiene and food safety[: 3 hours] .
- (4) Food safety tracking system[: 3 hours] .
- (5) Cleaning and sanitizing[: 2 hours] .
- (6) Facilities and equipment layout[: 2 hours] .
- (7) Statutory and regulatory requirements[: 1 hour] .

(b) [*Topic: Foodborne illness.* At least 2 hours of the instruction in a certification training program shall pertain to the topic of foodborne illness relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

- (i) Bacteria.
- (ii) Communicable disease.
- (iii) Confirmed disease outbreak.
- (iv) Fungi.
- (v) Potentially hazardous foods.
- (vi) Infection.
- (vii) Intoxication.

- (viii) Parasite.
- (ix) Pathogenic organism.
- (x) Time and temperature.
- (xi) Virus.

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

Content for courses in the nonprofit certification category. A certification training program in the nonprofit certification category shall contain instruction in the following topics:

- (1) Food safety, with a portion addressing food safety considerations in the context of fund-raising events.
- (2) Foodborne illness.
- (3) Food safety tracking system.

[(c) *Topic: Time and temperature.* At least 2 hours of the instruction in a certification training program shall pertain to the topic of time and temperature relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

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

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

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

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

[(d) *Topic: Relationship between personal hygiene and food safety.* At least 3 hours of the instruction in a certification training program shall pertain to the topic of the relationship between personal hygiene and food safety relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

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

(vii) Staphylococcus.

(viii) Transmissible.

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

(i) Handwashing techniques and frequency.

(ii) Relationship of hand contact to foodborne illness.

(iii) Contamination by poor hygienic practices such as sneezing, coughing and scratching.

(iv) Clothing.

(v) Fingernails.

(vi) Eating, drinking or using tobacco.

(vii) Hair restraint.

(viii) Animals in the workplace.

(3) Employee health, including the following subjects:

(i) Infections or diseases which can be transmitted by open wound, sinus infection, virus or sore throat.

(ii) Identifying employes who may transmit infection or disease.

(iii) High risk groups.

(iv) Imposition and removal of employee exclusions and restrictions.

(v) Mandatory and voluntary reporting of foodborne illness.

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

[(e) *Topic: Food safety tracking system.* At least 3 hours of the instruction in a certification training program shall pertain to the topic of food safety tracking systems relevant to the industry-specific category with respect to which certification is sought.

This instruction shall address the following:

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

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

(2) Receiving food, including the following subjects:

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

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

- (i) Dry storage temperature and practices.**
- (ii) Refrigeration and freezer holding temperatures and product protection.**
- (iii) Shelf life.**
- (iv) Cross-contamination and adulteration.**
- (v) Product protection in retail service/display areas and storage areas.**
- (vi) Product labeling.**
- (vii) Labeling of poisonous or toxic materials.**
- (viii) Original containers.**
- (ix) Working containers.**
- (x) Food storage prohibitions, including locker rooms, toilet rooms, garbage rooms and under sewer lines.**

(4) Preparation and processing of food, including the following subjects:

- (i) Personal hygiene.**
- (ii) Practices regarding disposable gloves.**
- (iii) Contamination by chemical or physical additives.**
- (iv) Cross-contamination.**
- (v) Equipment/utensils.**
- (vi) Hazards to humans in using equipment.**
- (vii) Machine guards, slicer blades and protective light shields.**

- (viii) Corrective actions.
- (ix) Potentially hazardous foods.
- (x) HACCP.
- (xi) Critical control point.]

[(f) *Topic: Cleaning and sanitizing.* At least 2 hours of the instruction in a certification training program shall pertain to the topic of cleaning and sanitizing relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

- (i) Adulteration.
- (ii) Air dry.
- (iii) Bleach.
- (iv) CIP.
- (v) Cleaning.
- (vi) Contamination.
- (vii) Cross-contamination.
- (viii) Detergent.
- (ix) Easily cleanable.
- (x) Food contact surface.

- (xi) Nonfood contact surface.
 - (xii) pH.
 - (xiii) ppm.
 - (xiv) Sanitization.
 - (xv) Test strips.
 - (xvi) Warewashing.
 - (xvii) Quaternary ammonium compound.
- (2) MSDS Fact Sheets.
 - (3) Proper use of hot water or chemicals in sanitizing.
 - (4) The difference between cleaning and sanitizing.
 - (5) Types of sanitizers, their usage and the use of test strips.
 - (6) Detergents.
 - (7) Procedures to wash-rinse-sanitize.
 - (8) The frequency with which food contact surfaces, utensils, equipment and nonfood contact surfaces should be sanitized.
 - (9) Equipment.
 - (10) Manual warewashing.
 - (11) Mechanical warewashing.
 - (12) The proper use of cleaning methods such as air drying, wiping cloths, CIP and water temperature.]

[(g) Topic: Facilities and equipment layout. At least 2 hours of a certification training program shall pertain to the topic of facilities and equipment layout relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

(i) Air gap.

(ii) Backflow device.

(iii) Cleanability.

(iv) Potable water.

(v) Handwash sink

(vi) Plan review.

(2) Proper equipment design and location.

(3) Construction of floors, walls and ceilings.

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

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

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

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

(8) Review of plans for equipment and building layout and design.]

[(h) Topic: Statutory and regulatory requirements. At least 1 hour of a training program shall pertain to the topic of statutory and regulatory requirements relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

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

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

§ 76.8. [Format of a certification examination] Certification examination requirements.

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

A certification examination shall be administered at the conclusion of an approved certification training course, except for a training course in the “nonprofit” certification

category. The examination shall adequately test food protection knowledge with respect to the certification category of the approved certification training course.

(1) If the certification category of the approved certification training course is the “general” certification category described in § 76.5(b)(2) (relating to certification training programs: Obtaining the Department's approval), the examination shall consist of at least 80 questions (100 questions being the recommended minimum), and the minimum passing score shall be 75%. If the examination is accredited by CFP, or is an examination administered as a requirement for passing a Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of questions and passing score shall be as determined by the body that prepared the examination.

(2) If the certification category of the approved certification training course is the “process-specific” certification category described in § 76.5(b)(2), the examination shall consist of at least 80 questions, and the minimum passing score shall be 75%. If the examination is accredited by CFP or is an examination administered as a requirement for passing a Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of questions and passing score shall be as determined by the body that prepared the examination.

(3) If the certification category of the approved certification training course is the “modified” certification category described in § 76.5(b)(2), the examination shall consist of at least 40 questions, and the minimum passing score shall be 75%. If the examination is accredited by CFP or is an examination administered as a requirement for passing a

Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of questions and passing score shall be as determined by the body that prepared the examination.

(4) If the certification category of the approved certification training course is the “nonprofit” certification category, an examination shall not be required.

§ 76.9. Reporting results of a certification examination.

(a) Reporting results to the program participant. A person who proctors a certification examination shall, within 30 calendar days of proctoring the examination, mail or deliver written confirmation of the following to any person who took the examination:

(1) [written confirmation of that] That person's examination score, expressed as the percentage of correct answers.

(2) [the] The date and location of the examination [and the industry-specific category of food establishment addressed in the examination. The examination score shall be expressed as the percentage of correct answers].

(3) The name of the course instructor.

(4) If the approved certification training program preceding the examination required a specific level of food-safety-related education or experience as a prerequisite to participating in the training program, confirmation that this requirement was met.

(b) Reporting results to the Department. Within [that same] the 30-day time period described in subsection (a), the proctor shall mail the same information to the Department

at the address in § 76.16 (relating to contacting the Department), using either a form provided by the Department upon request, or a copy of the written confirmation # THE PROCTOR provided the person who took the examination.

§ 76.10. Applying for certification.

(a) *Application required.* A person who has [attained a score of 70% or higher] completed an approved certification training course and attained a score equal to or higher than the minimum passing score required under § 76.8 (relating to certification examination requirements) on a certification examination administered within 5 years preceding the date the application is delivered to the Department may apply to the Department for certification. Certification is granted through issuance of the certificate described in § 76.11 (relating to certificate).

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

* * * * *

(4) [The industry-specific food establishment category (as described in § 76.3(a) (relating to requirements for food establishments)) with respect to which certification is sought.] The certification category of the approved certification training program (as described in § 76.5 (relating to certification training programs: Obtaining the Department's approval)) - whether general, process-specific, modified or nonprofit.

* * * * *

(d) *Department action on application.* The Department will mark or stamp the date of receipt upon each application it receives and will, within 30 days of receiving an application and the application fee, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation.

§ 76.11. Certificate.

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

* * * * *

(2) The [industry-specific category of food establishment, as described in § 76.3(a) (relating to requirements for food establishments), with respect to which the person is certified.] certification category of the approved certification program (as described in § 76.5 (relating to certification training programs: obtaining the Department's approval)) - whether general, process-specific, modified or nonprofit.

* * * * *

(6) A statement that the Department has determined the person identified on the certificate to possess adequate food protection knowledge [and to be a certificateholder with respect to the industry-specific category of food establishment designated on the certificate].

* * * * *

(b) *Ownership of certificate.* A certificate issued by the Department will remain the property of the Department. A certificateholder, certified supervisory [employee]

employee, food establishment or other person having physical possession of a certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

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

* * * * *

§ 76.12. Renewal of certification.

(a) *General requirement.* A certificateholder shall [obtain at least 7.5 hours of approved continuing education in the area of food safety and sanitation] complete an approved certification training program every 5 years, commencing with the date the certificate is issued. [An approved continuing education course] The approved certification training program will not require a written examination as a condition of completion. If a certificateholder fails to obtain this approved continuing education and deliver a complete certification renewal application to the Department prior to the expiration date of the certificate, the certificate shall expire and the certificateholder shall successfully complete an approved certification program and a certification examination before certification will be granted. A person who seeks to change the certification category with respect to which that person is currently certified may not do so through the certification renewal process described in this section, but shall follow the training and application procedure for initial certification.

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

* * * * *

(3) [The industry-specific food establishment category or categories, as described in § 76.3(a) (relating to requirements for food establishments), with respect to which the applicant is certified]. The certification category appearing on the applicant's current certificate.

* * * * *

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

* * * * *

(b) *General requirements for approval.* The Department will approve a continuing education course, and the certification category of that course, if [it] the course instructs participants in current food protection practices, fits within the certification category with respect to which approval is sought and has been recommended for approval by the Advisory Board.

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

* * * * *

(6) The certification category with respect to which approval is sought.

(7) Other information the Department might reasonably require in evaluating whether to approve the continuing education course.

* * * * *

§ 76.16. Contacting the Department.

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

ATTN: Food [Employee] Employee Certification

Department of Agriculture

Bureau of Food Safety and Laboratory Services

2301 North Cameron Street

Harrisburg, [PA] Pennsylvania 17110-9408

§ 76.17. Preemption and local governmental authority.

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

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

(c) *Option of certain local government units.* A county, city, borough, incorporated town or township having a food [employee] employee certification program that was in effect prior to September 1, 1994, may apply to the Department in accordance with the procedure in § 76.5 (relating to approved certification training programs: obtaining the Department's approval) to become an approved certification training program with respect to one or more [industry-specific categories of food establishments] certification category, as described in § 76.5(b)(2).

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

§ 76.18. [Advisory Board.] Reserved.

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

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

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

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

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

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

[(d) *Quorum*. A simple majority of the Advisory Board membership shall constitute a quorum of that body. A simple majority of a quorum is required for any formal action of the Advisory Board.]

§ 76.19. Civil penalties.

* * * * *

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



PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 76]

Food Employee Certification

[34 Pa.B. 831]

The Department of Agriculture (Department) proposes to amend Chapter 76 (relating to food employee certification) to read as set forth in Annex A.

Statutory Authority

Chapter 65 of 3 Pa.C.S. (relating to the Food Employee Certification Act) (act) provides the legal authority for this proposed rulemaking. Sections 6503(d) and 6505 of 3 Pa.C.S. (relating to certification advisory board and programs; and rules and regulations), respectively: (1) require the Department to adopt food safety protection and training standards for the certification of supervisory employees who are responsible for the storage, preparation, display or serving of food to the public in establishments regulated by the Department or local health organizations; and (2) delegate to the Department the power to adopt regulations necessary for the proper enforcement and administration of the act. The act also requires that regulations be promulgated with the approval of the Food Employee Certification Advisory Board (Board). The Board approved this proposed rulemaking at its October 6, 2003, meeting.

Purpose

Chapter 76 took effect in October 1999. The act was subsequently amended by the act of December 20, 2000 (P. L. 934, No. 124) (Act 124) and then by the act of December 9, 2002 (P. L. 1495, No. 190) (Act 190). The purpose of the proposed rulemaking is to implement the statutory changes wrought by the amendments to the act.

Background

The act was the product of an industry-driven initiative to establish minimum food safety training requirements to be met by at least one supervisory employee in most food establishments in this Commonwealth.

Act 124 revised the act by: (1) deleting the requirement that these food safety training requirements be "industry-specific"; (2) extending the date by which food establishments must come into compliance with the act by 2 years (from July 1, 2001, to July 1, 2003); (3) exempting certain food establishments operated by charitable and nonprofit organizations

from the requirements of the act; and (4) requiring the Department to develop a food safety training program for those organizations that--although exempt from the requirements of the act--elect to voluntarily seek certification under the act.

Act 190 revised the act by: (1) extending the date by which food establishments must come into compliance with the act by another year (from July 1, 2003, to July 1, 2004); (2) expanding the membership of the Board; and (3) requiring the Department to promulgate regulations (approved by the Board) by July 1, 2004, establishing training programs consistent with the revised act.

The proposed rulemaking is required to be promulgated as a final-form rulemaking by July 1, 2004. The act requires that the Department consider a number of factors in writing the rulemaking, among them: (1) the existence and operation of Department-approved employee training programs on safe food handling; (2) the fact that some food establishments engage in only the limited handling of potentially hazardous food; (3) the number of hours necessary to train food establishment employees to handle food safely, with consideration of the "scope" of the food establishment's business; and (4) the demonstration necessary for the Department to be satisfied that a particular supervisory employee is proficient in the safe handling of food. The Department has given consideration to all of these factors in the drafting of the proposed rulemaking.

Need for the Proposed Rulemaking

This proposed rulemaking is needed to implement the changes to the act under Act 124 and Act 190.

Overview of the Major Provisions of the Proposed Rulemaking

Proposed § 76.1 (relating to compliance) specifies that the date by which compliance with the act becomes mandatory is July 1, 2004 (rather than the rescinded July 1, 2001, mandatory compliance date). It also restates the new statutory exemption for certain food establishments operated by charitable and nonprofit organizations.

Proposed § 76.2 (relating to definitions) is shortened considerably. Many of the terms defined in this section relate to industry-specific categories of food safety training programs. These industry-specific programs are no longer required, and the related defined terms are no longer needed.

Proposed § 76.3 (relating to requirements for food establishments) deletes the classification of food establishments into industry-specific categories. The section references a "general" certification category that will suffice for all certified supervisory employees. It would also afford a person the option to undergo less extensive training if the person seeks to be a certified supervisory employee at a food establishment that: (1) engages in limited, specific food processing activities; (2) engages in only the limited handling of potentially hazardous foods; or (3) is a nonprofit entity that is exempt from having to comply with the act but that seeks certification nonetheless.

Proposed §§ 76.4 and 76.10(a) (relating to eligibility to apply for certification; and applying for certification) are amended by adding language affording a prospective applicant for certification 5 years from the successful completion of an approved

certification training program and certification examination within which to apply for certification. Beyond that period, it would be necessary for the prospective applicant to complete another approved certification training program to be eligible to apply. This requires prospective applicants to have relatively recent food safety training to be eligible to apply for certification. The current provision places no time restrictions on this application period.

Proposed § 76.5 (relating to certification training programs: Obtaining the Department's approval) describes four general categories of certification training programs. Training that fits within the "general" category would be acceptable for a certified supervisory employee at any type of food establishment. There are three other categories that address special circumstances when less expansive training would suffice to meet the requirements of the act.

Proposed § 76.7 (relating to certification training programs: Food safety protection and training standards) deletes detailed, industry-specific training requirements and replaces them with designations of the general subject matter to be addressed in each of the four general categories of certification training.

Proposed § 76.8 (relating to format of a certification examination) sets forth the basic requirements for passing food certification training in each of the four general categories of certification training.

The proposed rulemaking deletes § 76.18 (relating to Advisory Board), since it simply restates the provisions of the act describing the composition and function of the Board.

Affected Individuals and Organizations

The proposed rulemaking implements changes prescribed by Act 124 and Act 190. Impact upon individuals or organizations is the result of Act 124 or Act 190, and not the proposed rulemaking. Act 124 exempts certain food establishments operated by charitable and nonprofit organizations from the requirements of the act. This will result in saving these organizations the cost of obtaining previously required training and certification for a supervisory employee. For exempt organizations that elect to voluntarily comply with the act, the Department will develop and offer a training course for employees of the organizations. Act 124 also leaves open the option for the General Assembly to appropriate funds to help these organizations defray the cost of the training offered by the Department.

Fiscal Impact

Commonwealth: The proposed rulemaking imposes some costs upon the Commonwealth. The Department estimates its costs in administering the certification requirements imposed by the act at \$15,000 per year until July 1, 2004 (the date beyond which compliance with the certification requirements becomes mandatory), and \$30,000 per year starting July 1, 2004.

Political Subdivisions: The proposed rulemaking imposes no costs and has no fiscal impact upon political subdivisions.

Private Sector: The proposed rulemaking imposes no costs and has no fiscal impact upon

the private sector. The changes to the act accomplished by Act 124 and Act 190 relieve food establishments operated by certain exempt charitable and nonprofit organizations from the cost of training and certification if a supervisory employee. These cost savings cannot be readily quantified, and are the product of the referenced legislation, rather than the proposed rulemaking. The overall cost of compliance with the certification requirements imposed by the act is estimated at \$2 million (approximately 100,000 affected food establishments, multiplied by the minimum \$20 fee prescribed by the act). This figure excludes the costs of obtaining the training required as a prerequisite to certification.

General Public: The proposed rulemaking imposes no costs and has no fiscal impact upon the general public. Although food establishments may incur some costs in obtaining certification for a supervisory employee, these costs are expected to be modest. Additionally, since the act has been amended to exempt more types of food establishments from its requirements, these exempt food establishments will no longer be required to bear the costs of compliance.

Paperwork Requirements

The proposed rulemaking is not expected to have an appreciable impact upon the Department's paperwork volume.

Effective Date

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

Sunset Date

There is no sunset date for the proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment Period/Contact Person

Interested persons are invited to submit written comments regarding the proposed

rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments may be submitted to the Department of Agriculture, Bureau of Food Safety and Laboratory Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Martha M. Melton.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-145. (1) General Fund; (2) Implementing Year 2003-04 is \$15,000; (3) 1st Succeeding Year 2004-05 is \$30,000; 2nd Succeeding Year 2005-06 is \$30,000; 3rd Succeeding Year 2006-07 is \$30,000; 4th Succeeding Year 2007-08 is \$30,000; 5th Succeeding Year 2008-09 is \$30,000; (4) 2002-03 Program--\$N/A; 2001-02 Program--\$N/A; 2000-01 Program--\$N/A; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART III. BUREAU OF FOOD SAFETY AND LABORATORY SERVICES

Subpart C. MISCELLANEOUS PROVISIONS

CHAPTER 76. FOOD [EMPLOYEE] EMPLOYEE CERTIFICATION

§ 76.1. Compliance.

(a) *Mandatory compliance.* On or after July 1, [2001] 2004, a food establishment shall comply with the act and this chapter, unless it is exempt under subsection (d).

(b) *Interim compliance optional.* A food establishment need not comply with the act or this chapter until July 1, [2001] 2004, but is encouraged to do so in advance of that date.

(c) *Benefit of interim compliance.* If a food establishment that voluntarily complies with the act and this chapter is the subject of an action to recover fines or penalties for a violation of the Food Act, and the violation occurs prior to July 1, [2000] 2004, the voluntary compliance of the food establishment will be considered a mitigating factor in determining whether the food establishment shall be assessed more than the minimum fine or civil penalty required by law.

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

* * * * *

(4) **A food establishment managed by an organization which is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)).**

(5) A food establishment managed on a not-for-profit basis by an organization which is a volunteer fire company or an ambulance, religious, charitable, fraternal, veterans, civic, agricultural fair or agricultural association or any separately chartered auxiliary of those associations.

(6) A food establishment managed by an organization which is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis.

§ 76.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless, otherwise defined in **[the most current FDA Food Code] Chapter 46 (relating to food code)**:

Act--3 Pa.C.S. Chapter 65 (relating to the Food [Employee] Employee Certification Act).

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

Adulteration--An action that creates adulterated food.]

Advisory Board or Board--The Food [Employee] Employee Certification Advisory Board.

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

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

Asymptomatic--Presenting no symptoms of disease.

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

* * * * *

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

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

Bleach--Sodium hypochlorite, a chemical sanitizer.]

CFP or Conference for Food Protection--An independent, National voluntary nonprofit organization to promote food safety and consumer protection.

(i) Objectives of the organization include identifying and addressing food safety problems and promoting uniformity of regulations in food protection.

(ii) Participants include Federal, State, and local regulatory agencies, several universities, test providers, certifying organizations, consumer groups, food service and retail store trade associations and operators.

[CIP or cleaned in place--

(i) Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(ii) The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place cleaning without the use of a CIP system.]

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

* * * * *

Certification category--A designation of one of the four types of Department-approved certification training programs, indicating the depth of food safety training received by a person who successfully completes such a program. The four certification categories are as follows:

- (i) General certification category.**
- (ii) Process-specific certification category.**
- (iii) Modified certification category.**
- (iv) Nonprofit certification category.**

Certified supervisory [employe] employee--A supervisory **[employe] employee** holding a valid certificate.

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

* * * * *

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

Confirmed disease outbreak--A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological

analysis implicates food as the source of the illness.

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

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

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

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

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[Detergent--A cleaning agent.

Easily cleanable--

(i) A characteristic of a surface that:

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

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

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

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

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

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

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

FDA Food Code--A publication of recommendations by the United States Food and Drug Administration (FDA) for safeguarding public health and ensuring safe food.]

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Food Code--Chapter 46.

[Food contact surface--One of the following:

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

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

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

Foodborne disease outbreak--The occurrence of two or more cases of a similar illness resulting from ingestion of a common food.]

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[Fungi--A division of lower plant life which includes yeasts, molds, mildew and mushrooms.

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

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

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

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

Hermetically sealed container--A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to

maintain the commercial sterility of its contents after processing.

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

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

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

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

Limited handling of potentially hazardous foods--Food handling activities that are limited to the placement of a potentially hazardous food on or into a warming, heating or cooking unit. The term includes such activities as placing a hot dog on a roller, placing a pizza in a cooking/warming unit or warming a pre-made sandwich in a microwave oven.

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

MSDS or Material Safety Data Sheet--A data sheet supplied by manufacturers of hazardous chemicals which gives proper labeling of the product, hazard warnings and the name of the manufacturer.

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

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

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

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

Pathogenic organism--A disease-producing organism.]

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

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

Potable water--Safe drinking water as defined in the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1--721.17).]

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

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

Ready-to-eat food--

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

(ii) The term includes:

(A) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food.

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

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

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

Reduced oxygen packaging--

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

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

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

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

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

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

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

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

***Supervisory* [*employee*] *employee*--An owner or a person employed by or designated by the business owner to fulfill the requirements of the act, and who has supervisory authority and is responsible for the storage, preparation, display or serving of foods to the public in establishments regulated by the Department or local health organizations.**

[*Temperature danger zone*--The temperature range which is favorable for the growth of many types of pathogenic organisms in potentially hazardous foods.

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

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

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

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

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

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

§ 76.3. Requirements for food establishments.

(a) [***Industry-specific categories of food establishments.*** A food establishment that is not exempt from compliance under § 76.1(d) (relating to compliance) shall be

classified under one or more of the following industry-specific categories:

- (1) A food processor that manufactures potentially hazardous foods.
- (2) A food service that prepares potentially hazardous foods for the consumer, or serves potentially hazardous foods to the consumer, or both.
- (3) A bakery that processes potentially hazardous foods.
- (4) A retail food store that offers potentially hazardous food that is not exempt under § 76.1(d) to the consumer.
- (5) A frozen dessert manufacturer.] *General requirement.* A food establishment that is not exempt from compliance under § 76.1(d) (relating to compliance) shall comply with the act and this chapter.

(b) *Certified supervisory [employee] employee.* A food establishment shall employ or designate at least one certified supervisory [employee who is certified with respect to the industry-specific category of the food establishment. If a food establishment falls within more than one of the industry-specific categories in subsection (a), the food establishment shall employ or designate one or more certified supervisory employees so that, in the aggregate, there is a certified supervisory employee who is certified with respect to each of the applicable industry-specific categories of the food establishment] employee who holds a valid certificate issued by the Department under authority of the act and this chapter. The certificate shall be in the general certification category unless one of the following is accurate:

- (1) The food establishment engages only in one or more specific, identified food processing activities (such as making cider or preparing frozen desserts), in which case a certificate in the process-specific certification category, pertinent to the processing conducted at the food establishment, shall suffice.
- (2) The food establishment's personnel engage only in the limited handling of potentially hazardous foods (such as persons who handle food products that do not require any preparation by the food establishment other than to place the food on or in a cooking or warming unit), in which case a certificate in the modified certification category, pertinent to the food handling conducted at the food establishment, shall suffice.
- (3) The food establishment is a nonprofit entity that, although otherwise exempt from compliance under § 76.1(d) voluntarily seeks certification under section 4(c)(2) of the act (relating to certification of employees), in which case a certificate in the nonprofit certification category shall suffice.

* * * * *

(d) [*Employee*] *Employee turnover.* If a food establishment loses its only certified supervisory [employee] employee through [employee] employee turnover or for any other reason, the food establishment shall comply with subsection (b) within 3 months of the date

it lost its previous certified supervisory **[employee] employee**.

(e) *Certification records.* A food establishment shall maintain, at the food establishment site, a list of certified supervisory **[employees] employees** under its employment during the last 4 months including: name, certificate number, certification category, issuance date, expiration date, date employment began and date employment terminated.

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

(h) *Return of certificate.* A certificate is the property of the Department and is issued to the individual person identified on its face. A food establishment shall promptly deliver the certificate to a certified supervisory **[employee] employee** who leaves the employ of the food establishment or who otherwise ceases to be a certified supervisory **[employee] employee** with respect to that establishment.

§ 76.4. Eligibility to apply for certification.

(a) *Training program required.* A person shall successfully complete an approved certification training program **[and obtain a score of 70% or higher on an approved certification examination in order]**, including a certification examination, to be eligible to apply to the Department for certification.

(b) *Timeliness of training.* A person is not eligible to apply to the Department for certification unless the certification examination was administered within 5 years preceding the date the application is delivered to the Department.

(c) *Exception to examination requirement.* Subsection (a) notwithstanding, a certification examination is not required when a person is applying for certification in the nonprofit certification category.

§ 76.5. Certification training programs: Obtaining the Department's approval.

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(b) *General requirements for approval.*

(1) *Approval of program.* The Department will approve a certification training program if it **[addresses at least one industry-specific category of food establishment described in § 76.3(a) (relating to requirements for food establishments),]** meets the food safety protection and training standards described in § 76.7 (relating to certification training programs: Food safety protection and training standards), **fits within one of the certification categories described in paragraph (2)** and has been recommended for approval by the Advisory Board. **[A single certification training program may be approved with respect to more than one industry-specific category of food**

establishment.]

(2) *Certification categories.* The Department may approve a certification training program in one of four certification categories. These categories, and the requisites for inclusion of a certification training program within each, are as follows:

(i) *General certification category.* The Department will approve a certification training program in the general certification category if one of the following applies:

(A) The training program addresses the topics set forth in § 76.7(a).

(B) The training program is a Federally-mandated HACCP training program for juice, seafood, meat or poultry.

(ii) *Process-specific certification category.* The Department will approve a certification training program in the process-specific certification category if the following apply:

(A) The subject matter of the training program relates to one or more specific, identified food processing activities (such as making cider or preparing frozen desserts).

(B) The training program addresses the topics in § 76.7(a) in a manner specifically directed to the food processing activities that are the identified subject matter of the training program.

(iii) *Modified certification category.* The Department will approve a certification training program in the modified certification category if both of the following are accurate:

(A) The subject matter of the training program is addressed to persons who handle potentially hazardous food on only a limited basis (such as persons who handle food products that do not require any preparation by the food establishment other than to place the food on or in a cooking or warming unit).

(B) The training program addresses the topics in § 76.7(a) in a manner specifically directed toward persons who handle potentially hazardous food on only a limited basis, and in a less-comprehensive manner than a certification training program in the general certification category.

(iv) *Nonprofit certification category.* The Department will approve a certification training program in the nonprofit certification category if either of the following apply:

(A) The training program is developed and administered by the Department under authority of section 4(g)(2) of the act (relating to certification of employees), and meets the course content requirements in § 76.7(b).

(B) The training program is developed and administered by an entity other than the Department, and meets the requirements referenced in clause (A).

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

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(2) A course syllabus demonstrating that the program would meet the **[minimum hour and] course content requirements** in § 76.7.

(3) **[The industry-specific category or categories of food establishment, as described in § 76.3(a), to be addressed by the certification training program] A designation of the certification category (whether general, process-specific, modified or nonprofit), as described in subsection (b)(2), with respect to which approval of the training program is sought.**

(4) **One of the following:**

(i) A copy of the examination to be administered at the conclusion of the certification training program, together with an answer key for that examination, if these documents are available.

(ii) **The name of the CFP-accredited examination to be administered at the conclusion of the certification training program.**

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(7) If the certification program is a home study program, the proposed site and date the approved certification examination is to be administered, **if available.**

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

(a) **[Minimum hours of instruction/overview of topics. A certification training program shall consist of at least 15 hours of instruction relevant to the industry-specific category with respect to which certification is sought. As described in detail in subsections (b)--(h), a] Content in general.** A certification training program in the general certification category, the process-specific certification category or the modified certification category shall contain instruction in the following topics **[for the minimum hours indicated]:**

(1) Foodborne illness[: **2 hours**].

(2) Time and temperature[: **2 hours**].

(3) Relationship between personal hygiene and food safety[: **3 hours**].

- (4) Food safety tracking system[: 3 hours].
- (5) Cleaning and sanitizing[: 2 hours].
- (6) Facilities and equipment layout[: 2 hours].
- (7) Statutory and regulatory requirements[: 1 hour].

(b) [Topic: Foodborne illness. At least 2 hours of the instruction in a certification training program shall pertain to the topic of foodborne illness relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

- (i) Bacteria.**
 - (ii) Communicable disease.**
 - (iii) Confirmed disease outbreak.**
 - (iv) Fungi.**
 - (v) Potentially hazardous foods.**
 - (vi) Infection.**
 - (vii) Intoxication.**
 - (viii) Parasite.**
 - (ix) Pathogenic organism.**
 - (x) Time and temperature.**
 - (xi) Virus.**
- (2) Microorganisms that commonly cause foodborne infection or intoxication.**
 - (3) The process by which microorganisms cause foodborne illness.**
 - (4) The definition, characteristics and recognition of potentially hazardous foods.**
 - (5) Factors that contribute to foodborne illness.**
 - (6) Prevention of food contamination from employees, equipment, premises, utensils and consumers.**

(7) Prevention of food contamination from chemicals.

(8) Emerging pathogens.]

Content for courses in the nonprofit certification category. A certification training program in the nonprofit certification category shall contain instruction in the following topics:

(1) Food safety, with a portion addressing food safety considerations in the context of fund-raising events.

(2) Foodborne illness.

(3) Food safety tracking system.

[(c) Topic: Time and temperature. At least 2 hours of the instruction in a certification training program shall pertain to the topic of time and temperature relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

(i) Bacteria growth.

(ii) Contamination.

(iii) Critical control point.

(iv) Critical item.

(v) Cross-contamination.

(vi) Food contact surface.

(vii) Hermetically sealed container.

(viii) Lag phase.

(ix) Log phase.

(x) Ready-to-eat foods.

(xi) Reduced oxygen packing.

(xii) Slacking.

(xiii) Temperature danger zones.

(xiv) Water activity.

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

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

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

(d) *Topic: Relationship between personal hygiene and food safety.* At least 3 hours of the instruction in a certification training program shall pertain to the topic of the relationship between personal hygiene and food safety relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

(i) Asymptomatic.

(ii) Escherichia coli.

(iii) Hepatitis A infection.

(iv) Highly susceptible group.

(v) Pathogenic organism.

(vi) Salmonella enteritidis.

(vii) Staphylococcus.

(viii) Transmissible.

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

(i) Handwashing techniques and frequency.

(ii) Relationship of hand contact to foodborne illness.

(iii) Contamination by poor hygienic practices such as sneezing, coughing and scratching.

(iv) Clothing.

(v) Fingernails.

(vi) Eating, drinking or using tobacco.

(vii) Hair restraint.

(viii) Animals in the workplace.

(3) Employee health, including the following subjects:

(i) Infections or diseases which can be transmitted by open wound, sinus infection, virus or sore throat.

(ii) Identifying employees who may transmit infection or disease.

(iii) High risk groups.

(iv) Imposition and removal of employee exclusions and restrictions.

(v) Mandatory and voluntary reporting of foodborne illness.

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

(e) *Topic: Food safety tracking system.* At least 3 hours of the instruction in a certification training program shall pertain to the topic of food safety tracking systems relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

(i) Adulteration.

(ii) Contamination.

(iii) Critical control point.

(iv) Cross-contamination.

(v) HACCP.

(vi) Product protection.

(2) Receiving food, including the following subjects:

(i) Approved sources.

- (ii) Condition of food.**
- (iii) Thermometers and temperature checks.**
- (iv) Rejection for adulteration, temperature violations, distressed merchandise or condition of carrier.**
- (3) Safe storage of food, including the following subjects:**
 - (i) Dry storage temperature and practices.**
 - (ii) Refrigeration and freezer holding temperatures and product protection.**
 - (iii) Shelf life.**
 - (iv) Cross-contamination and adulteration.**
 - (v) Product protection in retail service/display areas and storage areas.**
 - (vi) Product labeling.**
 - (vii) Labeling of poisonous or toxic materials.**
 - (viii) Original containers.**
 - (ix) Working containers.**
 - (x) Food storage prohibitions, including locker rooms, toilet rooms, garbage rooms and under sewer lines.**
- (4) Preparation and processing of food, including the following subjects:**
 - (i) Personal hygiene.**
 - (ii) Practices regarding disposable gloves.**
 - (iii) Contamination by chemical or physical additives.**
 - (iv) Cross-contamination.**
 - (v) Equipment/utensils.**
 - (vi) Hazards to humans in using equipment.**
 - (vii) Machine guards, slicer blades and protective light shields.**
 - (viii) Corrective actions.**
 - (ix) Potentially hazardous foods.**

(x) HACCP.

(xi) Critical control point.

(f) *Topic: Cleaning and sanitizing.* At least 2 hours of the instruction in a certification training program shall pertain to the topic of cleaning and sanitizing relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

(i) Adulteration.

(ii) Air dry.

(iii) Bleach.

(iv) CIP.

(v) Cleaning.

(vi) Contamination.

(vii) Cross-contamination.

(viii) Detergent.

(ix) Easily cleanable.

(x) Food contact surface.

(xi) Nonfood contact surface.

(xii) pH.

(xiii) ppm.

(xiv) Sanitization.

(xv) Test strips.

(xvi) Warewashing.

(xvii) Quaternary ammonium compound.

(2) MSDS Fact Sheets.

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

- (4) The difference between cleaning and sanitizing.**
- (5) Types of sanitizers, their usage and the use of test strips.**
- (6) Detergents.**
- (7) Procedures to wash-rinse-sanitize.**
- (8) The frequency with which food contact surfaces, utensils, equipment and nonfood contact surfaces should be sanitized.**
- (9) Equipment.**
- (10) Manual warewashing.**
- (11) Mechanical warewashing.**
- (12) The proper use of cleaning methods such as air drying, wiping cloths, CIP and water temperature.**

(g) *Topic: Facilities and equipment layout.* At least 2 hours of a certification training program shall pertain to the topic of facilities and equipment layout relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

- (i) Air gap.**
 - (ii) Backflow device.**
 - (iii) Cleanability.**
 - (iv) Potable water.**
 - (v) Handwash sink**
 - (vi) Plan review.**
- (2) Proper equipment design and location.**
 - (3) Construction of floors, walls and ceilings.**
 - (4) Design of equipment such as refrigeration, hot holding, heating, ventilation, pest control, lighting and freezer equipment, and design of the buildings in which the equipment is located.**
 - (5) Acceptable water sources, water quality and quantity and water distribution systems.**

- (6) Plumbing design, construction, location, materials and operation.**
- (7) Management of solid and liquid waste, recyclables, refuse and returnables.**
- (8) Review of plans for equipment and building layout and design.**

(h) *Topic: Statutory and regulatory requirements.* At least 1 hour of a training program shall pertain to the topic of statutory and regulatory requirements relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

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

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

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

§ 76.8. [Format of a certification examination] Certification examination requirements.

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

A certification examination shall be administered at the conclusion of an approved certification training course, except for a training course in the "nonprofit" certification category. The examination shall adequately test food protection knowledge with respect to the certification category of the approved certification training course.

(1) If the certification category of the approved certification training course is the "general" certification category described in § 76.5(b)(2) (relating to certification training programs: Obtaining the Department's approval), the examination shall consist of at least 80 questions (100 questions being the recommended minimum), and the minimum passing score shall be 75%. If the examination is accredited by CFP, or is an examination administered as a requirement for passing a Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of questions and passing score shall be as determined by the body that prepared the examination.

(2) If the certification category of the approved certification training course is the "process-specific" certification category described in § 76.5(b)(2), the examination

shall consist of at least 80 questions, and the minimum passing score shall be 75%. If the examination is accredited by CFP or is an examination administered as a requirement for passing a Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of questions and passing score shall be as determined by the body that prepared the examination.

(3) If the certification category of the approved certification training course is the "modified" certification category described in § 76.5(b)(2), the examination shall consist of at least 40 questions, and the minimum passing score shall be 75%. If the examination is accredited by CFP or is an examination administered as a requirement for passing a Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of questions and passing score shall be as determined by the body that prepared the examination.

(4) If the certification category of the approved certification training course is the "nonprofit" certification category, an examination shall not be required.

§ 76.9. Reporting results of a certification examination.

(a) *Reporting results to the program participant.* A person who proctors a certification examination shall, within 30 calendar days of proctoring the examination, mail or deliver written confirmation of the following to any person who took the examination [written confirmation of that]:

(1) That person's examination score, [the] expressed as the percentage of correct answers.

(2) The date and location of the examination [and the industry-specific category of food establishment addressed in the examination. The examination score shall be expressed as the percentage of correct answers].

(3) The name of the course instructor.

(4) If the approved certification training program preceding the examination required a specific level of food-safety-related education or experience as a prerequisite to participating in the training program, confirmation that this requirement was met.

(b) *Reporting results to the Department.* Within [that same] the 30-day time period described in subsection (a), the proctor shall mail the same information to the Department at the address in § 76.16 (relating to contacting the Department), using either a form provided by the Department upon request, or a copy of the written confirmation it provided the person who took the examination.

§ 76.10. Applying for certification.

(a) *Application required.* A person who has [attained a score of 70% or higher] completed an approved certification training course and attained a score equal to or higher than the minimum passing score required under § 76.8 (relating to certification

examination requirements) on a certification examination administered within 5 years preceding the date the application is delivered to the Department may apply to the Department for certification. Certification is granted through issuance of the certificate described in § 76.11 (relating to certificate).

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

* * * * *

(4) [The industry-specific food establishment category (as described in § 76.3(a) (relating to requirements for food establishments)) with respect to which certification is sought.] The certification category of the approved certification training program (as described in § 76.5 (relating to certification training programs: Obtaining the Department's approval))--whether general, process-specific, modified or nonprofit.

* * * * *

(d) *Department action on application.* The Department will **mark or stamp the date of receipt upon each application it receives and will**, within 30 days of receiving an application and the application fee, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation.

§ 76.11. Certificate.

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

* * * * *

(2) The [industry-specific category of food establishment, as described in § 76.3(a) (relating to requirements for food establishments), with respect to which the person is certified] certification category of the approved certification program (as described in § 76.5 (relating to certification training programs: Obtaining the Department's approval))--whether general, process-specific, modified or nonprofit.

* * * * *

(6) A statement that the Department has determined the person identified on the certificate to possess adequate food protection knowledge [and to be a certificateholder with respect to the industry-specific category of food establishment designated on the certificate].

* * * * *

(b) *Ownership of certificate.* A certificate issued by the Department will remain the property of the Department. A certificateholder, certified supervisory **[employee] employee**, food establishment or other person having physical possession of a certificate shall, upon

written notice from the Department, surrender and return the certificate to the Department.

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

* * * * *

§ 76.12. Renewal of certification.

(a) *General requirement.* A certificateholder shall **[obtain at least 7.5 hours of approved continuing education in the area of food safety and sanitation] complete an approved certification training program** every 5 years, commencing with the date the certificate is issued. **[An approved continuing education course] The approved certification training program** will not require a written examination as a condition of completion. If a certificateholder fails to obtain this approved continuing education and deliver a complete certification renewal application to the Department prior to the expiration date of the certificate, the certificate shall expire and the certificateholder shall successfully complete an approved certification program and a certification examination before certification will be granted. **A person who seeks to change the certification category with respect to which that person is currently certified may not do so through the certification renewal process described in this section, but shall follow the training and application procedure for initial certification.**

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

* * * * *

(3) **[The industry-specific food establishment category or categories, as described in § 76.3(a) (relating to requirements for food establishments), with respect to which the applicant is certified.] The certification category appearing on the applicant's current certificate.**

* * * * *

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

* * * * *

(b) *General requirements for approval.* The Department will approve a continuing education course, **and the certification category of that course, if [it] the course** instructs participants in current food protection practices, **fits within the certification category with respect to which approval is sought** and has been recommended for approval by the Advisory Board.

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

* * * * *

(6) **The certification category with respect to which approval is sought.**

(7) Other information the Department might reasonably require in evaluating whether to approve the continuing education course.

* * * * *

§ 76.16. Contacting the Department.

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

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

§ 76.17. Preemption and local governmental authority.

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

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

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

category, as described in § 76.5(b)(2).

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

§ 76.18. [Advisory Board] (Reserved).

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

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

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

- (vi) **The Pennsylvania Food Processors Association.**
- (vii) **The Pennsylvania Veterinary Medical Association.**
- (viii) **The County Commissioners Association of Pennsylvania.**
- (ix) **The Pennsylvania League of Cities and Municipalities.**
- (x) **The Pennsylvania State Association of Boroughs.**
- (xi) **The Pennsylvania State Association of Township Commissioners.**
- (xii) **The Pennsylvania State Association of Township Supervisors.**
- (xiii) **The Pennsylvania School Food Service Association.**

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

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

(d) *Quorum.* A simple majority of the Advisory Board membership shall constitute a quorum of that body. A simple majority of a quorum is required for any formal action of the Advisory Board.]

§ 76.19. Civil penalties.

* * * * *

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

[Pa.B. Doc. No. 04-234. Filed for public inspection February 13, 2004, 9:00 a.m.]

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June 2, 2004

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

RE: FINAL-FORM REGULATION
Department of Agriculture
7 Pa. Code Chapter 76
Food Employee Certification
Proposed Rulemaking: 34 Pa. Bulletin 831 (February 14, 2004)
Approved by Office of General Counsel: May 6, 2004

Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation. This material includes copies of the Preamble and Annex "A". Copies of the Notice of Proposed Rulemaking and Regulatory Analysis Form are also enclosed. I respectfully request the Independent Regulatory Review Commission review and approve the above-referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

This Department's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to the appropriate Legislative Committees (the House and Senate Agricultural and Rural Affairs Committees), and have been mailed or delivered to each commentator on this date. In response to the requirement (at 71 P.S. § 745.5a(b) and 1 Pa. Code § 307.2(c)(7)) that this Department provide the names and addresses of commentators who requested additional information on the final-form regulation, the Department hereby relates that no commentators have made this request.

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

Sincerely,


Dwight-Jared Smith
Assistant Counsel

Enclosures

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

I.D. NUMBER: 2-145
 SUBJECT: Food Employee Certification
 AGENCY: DEPARTMENT OF AGRICULTURE



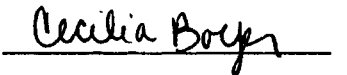
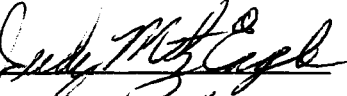

2389

TYPE OF REGULATION

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

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FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|--------|---|--|
| 6-2-04 |  | HERSHEY HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS |
| 6-2-04 |  | DALEY |
| 6-2-04 |  | WAUGH SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS |
| 6-2-04 |  | O'PAKE |
| 6-2-04 |  | IRRC INDEPENDENT REGULATORY REVIEW COMMISSION |
| _____ | _____ | ATTORNEY GENERAL (for Final Omitted only) |
| _____ | _____ | LEGISLATIVE REFERENCE BUREAU (for Proposed only) |