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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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April 14, 2004

Honorable Dennis C. Wolff, Secretary
Department of Agriculture
211 Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17110

Re: Regulation #2-145 (IRRC #2389)
Department of Agriculture
Food Employee Certification

Dear Secretary Wolff:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs Committee
Honorable Arthur D. Hershey, Majority Chairman, House Agriculture and Rural Affairs Committee
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural Affairs Committee

Comments of the Independent Regulatory Review Commission

on

Department of Agriculture Regulation No. 2-145

Food Employee Certification

April 14, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Agriculture (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 15, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 76.7. Certification training programs: Food safety protection and training standards and Section 76.12. Renewal of certificate. - Statutory authority.

The Food Employee Certification Act (Act) requires the Department to establish in regulations “[T]he number of hours necessary to prepare employees for safe food handling due to the food establishment's scope of business.” (3 P.S. § 6504(g)(1)(iii)) The Act's requirement is met by existing Subsection 76.7(a) which requires “at least 15 hours of instruction,” and existing Subsection 76.12(a) which requires “at least 7.5 hours of approved continuing education.” However, this rulemaking deletes the number of hours from Subsections 76.7(a) and 76.12(a). If the Department deletes these provisions, how will the regulation be in compliance with the Act?

2. Miscellaneous clarity issues.

- a) The following terms are being deleted from Section 76.2. *Definitions*. However, these terms continue to be used in the regulation as shown below. The Department should either retain these definitions or explain why they are no longer needed.

<u>Term</u>	<u>Where Used</u>
<i>Food contact surface</i>	Definition of “sanitizing”
<i>HACCP</i>	Sections 76.8(1), (2) and (3)
<i>Retail food store</i>	Definition of “food establishment”
<i>Water activity</i>	Definition of “potentially hazardous food”

- b) We were unable to find the term “food code” used in the regulation. It should be deleted from Section 76.2, or the Department should explain the need for it.

- c) Subsection 76.3(b) states, “...The certificate shall be in the general category unless one of the following is **accurate**:...” (Emphasis added.) It would be clearer to state “...unless one of the following applies:...”
- d) Subparagraph 76.5(b)(2)(iii) ends with the phrase “are accurate.” This phrase should be replaced with “apply.”
- e) Clause 76.5(b)(2)(iv)(B), which addresses programs administered by an entity other than the Department, ends with the phrase “...and meets the requirements referenced in Clause (A).” The dependence of Clause (B) on requirements in Clause (A) gives the appearance that entities other than the Department fall “under section 4(g)(2) of the act.” Is the intent for programs in Clause (B) to only meet “the course content requirements in § 76.7(b)”?
- f) Paragraphs 76.8(1), (2) and (3) each make a general cross reference to Section 76.5(b)(2). More specific cross references should be used since there are specific subparagraphs in Section 76.5(b)(2) that directly correspond to each certificate category. For example, Paragraph 76.8(3) describes a “modified” certificate and should therefore cross reference Section 76.5(b)(2)(iii) *Modified certification category*.

Facsimile Cover Sheet

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Agency: Department of Agriculture
Phone: 2-2853
Fax: 5-8402
Date: April 14, 2004
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Agriculture's regulation #2-145 (IRRC #2389). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Heidi Svonavec **Date:** 4/14/04