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September 6, 2012

Ms. Sheri Morris
Department of Agriculture
Bureau of Food Safety and Laboratory Services
2301 Cameron Street
Harrisburg, PA 17110-9408

Re: Proposed Rulemaking – Food Code; Food Employee Certification
42 Pa. Bulletin No. 32, August 11, 2012
Regulation No. 2-174; IRRC No. 2962

Dear Ms. Morris:

We represent the Pennsylvania Catholic Conference (PCC), an association comprised of the eight Latin Rite Roman Catholic Dioceses of Pennsylvania and the two Byzantine Rite Catholic Dioceses whose territories include the Commonwealth of Pennsylvania. PCC has authorized us to submit the following comments regarding the proposed Food Code regulations submitted for publication by the Department of Agriculture (the Department).

Subsection (a) of proposed § 46.212- **Food Prepared in a Private Home** closely tracks the authorizing, statutory language of Act 106 of 2010. Subsection (b), however, adds additional language not contained in Act 106 which may cause confusion for those who prepare nonhazardous food in their homes and seek to donate the food as authorized in subsection (a). It will also likely inhibit such donations to eligible charities.

Proposed subsection (b) of § 46.212 provides:

(b) Private homes that are registered food establishments under the Food Safety Act. Food prepared in a private home may be offered for human consumption in a retail food facility if the private home is registered with the Department as a food establishment under the Food Safety Act.

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This provision suggests that in order to prepare food in a private home and to donate it to a charitable organization as authorized in subsection (a) of § 46.212, the private home must first be “registered” with the Department as a “food establishment.”

A “food establishment” is defined as follows in the proposed regulations:

Food Establishment—

- (i) A room, building or place or portion thereof or vehicle maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing or transporting or handling food.
- (ii) The term excludes retail food facilities, retail food establishments, public eating and drinking places and those portions of establishments operating exclusively under milk or milk products permits.
- (iii) The term is synonymous with the term “food processing plant” in the Model Food Code.

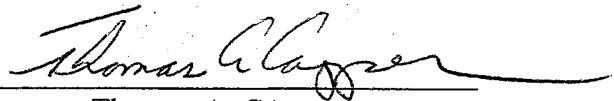
Under subsection (b), it appears the Department is proposing to require private homes to be registered and regulated in a manner similar to food processing plants even though the food is being prepared and donated as authorized under subsection (a). Such a Departmental requirement is not authorized under the grant of authority of Act 106 or the predecessor language contained in Act 31 of 2010.

If it is not the intent of the Department to require private homes to first be registered as “food establishments” in order to donate nonhazardous food, PCC requests the proposed regulation be revised to prevent confusion. We recommend the following amendment to § 46.212:

*(b) Private homes that are registered food establishments under the Food Safety Act. **Except as otherwise permitted under subsection (a), food** prepared in a private home may be offered for human consumption in a retail food facility if the private home is registered with the Department as a food establishment under the Food Safety Act.*

Thank you for your consideration of these comments and we look forward to your response.

BALL, MURREN & CONNELL

BY: 
Thomas A. Capper

cc: Independent Regulatory Review Commission

Dr. Robert J. O'Hara, Jr.

Mr. Sean McAleer