

Cooper, Kathy

2962

**From:** Susan Beal, DVM [susan@pasafarming.org]  
**Sent:** Sunday, September 09, 2012 1:38 AM  
**To:** IRRC; Susan Beal, DVM; Brian Snyder  
**Subject:** Comments - PASA - Department of Agriculture Proposed Regulation #2-174 (IRRC#2962):  
 "Food Code; Food Employee Certification"  
**Attachments:** PASA IRRC Comments #2-174 (IRRC#2962).docx

To whom it may concern:

These comments are being submitted on behalf of the Pennsylvania Association for Sustainable Agriculture, Brian Snyder, Executive Director, in response to the PA Department of Agriculture Proposed Regulation #2-174 (IRRC # 2962): Food Code; Food Employee Certification.

In the document attached (and also pasted below my signature), I have provided numbered comments as well as quoted text to which the comments refer. The comments below begin in reflecting the material found in the prodromal section of the document in which definitions are stated and move sequentially through the entire document.

Please acknowledge receipt of these comments.

Thank you for the opportunity to provide these comments to the IRRC.

Sincerely,

Susan Beal

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September 8, 2012

To whom it may concern:

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These comments are being submitted on behalf of the Pennsylvania Association for Sustainable Agriculture, Brian Snyder, Executive Director.

I have provided numbered comments as well as quoted text to which the comments refer. The comments below begin in reflecting the material found in the prodromal section of the document in which definitions are stated and move sequentially through the entire document.

Please acknowledge receipt of these comments.

Sincerely,

Susan Beal, DVM

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1. Why does the definition of comingle consider only shellstock ? Typically the term comingle has been used to define any combining of products from different sources, growers or harvest locations. It seems remiss to limit the definition of comingle to shellstock alone.

**Comingle**—To combine shellstock harvested on different days or from different growing areas as identified on the tag or label or to combine shucked shellfish from containers with different container codes or different shucking dates.

2. Regarding the definition of an “outbreak,” please clarify your use of the word case.

It may, indeed, be more appropriate to use the word occurrence in this situation, though we appreciate it is not the typical language of epidemiological discipline. In this use of the word, an occurrence could be defined as any occasion/location at which any number of individual have been documented as becoming ill from a presumed single source.

Two or more such occurrences would constitute an outbreak. In the absence of two or more such occurrences, then the isolated occurrence would be simply that – an occurrence.

**Foodborne disease outbreak**—The occurrence of two or more cases of a similar illness after ingestion of a common food.

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3. With respect to these words extracted from the totality of the passages quoted below, please clarify how the departments might view a CSA (community shared agriculture) making deliveries to homes, markets or collective drop off points.

Extracted segment:

**(A) Do not provide food to the consumer either directly or indirectly (such as through the home delivery of groceries).**

Total passage:

*Food establishment—*

A (i) **[retail food store and 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.**

The term (ii) **[includes those portions of public eating and drinking licensees which offer food for sale for off-premises consumption, except] 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.**

**The term is synonymous with the term "food processing plant" in the Model Food Code. (iii)**

**[Food facility—A public eating or drinking place or a retail food establishment. The term does not include the following:**

**A food service facility provided by or at an organized camp or campground. (i)**

**A food service facility provided by or at a school. (ii)**

**A food service facility at an institution such as a nursing home or hospital. (iii)**

**Any other food service facility that is not a public eating or drinking place. (iv)**

**Food processing plants, warehousing establishments and other food establishments that comply with the following: (v)**

**Are not retail food establishments. (A)**

**Do not provide food to the consumer either directly or indirectly (such as through the home delivery of groceries).**

**(B)**

**Applicable Federal regulations. (C)**

**Food facility operator—The entity that is legally responsible for the operation of the food facility, such as the owner, owner's agent or other person.**

**Food facility premises—The food facility, its contents and the contiguous land or property under the control of the food facility operator. If a food facility is a component of a larger operation, such as a hotel, motel, shopping mall or public campground, and that larger operation is also under the control of the food facility operator, that larger operation is part of the food facility premises to the extent it may impact the food facility, its personnel or its operations.**

**Food processing plant—A commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food facility.]**

4. Please clarify that rabbits, be they captive bred or wild game, are considered game in Pennsylvania. Please offer some clarity about the requirements for slaughter and market of such animals.

5. Do the rules of the PDA still supercede those of the county (and other) departments of health ?

*Licensor—Includes the following:*

The county department of health or joint-county department of health, whenever the (i) **[public eating or drinking place] retail food facility** is located in a political subdivision which is under the jurisdiction of a county department of health or joint-county department of health.

The health authorities of cities, boroughs, incorporated towns and first-class townships, whenever the (ii) **[public eating or drinking place] retail food facility** is located in a city, borough, incorporated town or first-class township not under the jurisdiction of a county department of health or joint-county department of health.

The health authorities of second class townships and second (iii) class townships which have adopted a home rule charter which elect to issue licenses under the **[Public Eating and Drinking Places Law] Retail Food Facility Safety Act** whenever **[the public eating and drinking place] a retail food facility** is located in **[the] a second class township or second class township** which has adopted a home rule charter not under the jurisdiction of a county department of health or joint-county department of health.

The Department, whenever the (iv) **[public eating and drinking place] retail food facility** is located in any other area of this Commonwealth.

6. Where does the definition of a mobile food facility – particularly that part that states cart, basket, box or similar structure – leave a CSA and that “basket, box or similar structure” in which the CSA person might deliver the food directly to the buyer and/or to a drop off location ?

**[Mobile food facility—Any stationary, movable or temporary food facility—such as a stand, vehicle, cart, basket, box or similar structure from which food is stored, prepared, processed, distributed or sold—which physically locates at one site or location for no more than 14 consecutive days, whether operating continuously or not during this time. The term does not include a food facility that is physically located at one site for more than 14 consecutive days.]**

7. What if there is an unannounced inspection ? Is the most “senior” “responsible” person on site at that moment deemed the person in charge ?

Can the employee/owner ask that the inspector return at another time ?

**Person in charge—[The individual present at a food facility responsible for the operation at the time of inspection.] A person designated by a retail food facility operator to be present at a retail food facility and responsible for the operation of the retail food facility at the time of inspection.**

8. This is a rather odd criteria, we propose, though do appreciate it’s a broader definition from other documents. Please provide clarification around such situations in which individuals or families might need to have water hauled in situations, be they temporary or permanent, where, for example, their water is not good because of other actions (contaminated wells come to mind).

**Public water system—A system which provides water to the public for human consumption, and which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, or as otherwise specified in 25 Pa. Code Chapter 109 (relating to safe drinking water).**

The term includes collection, treatment, storage and (i) distribution facilities under control of the operator of the system and used in connection with the system.

The term also includes a system which provides water for bottling or bulk hauling for human consumption. (ii)

9. Please provide clarification around the term “ready to eat” foods since there is so much potential for odd interpretations here. One could read this with greens and such in mind – and, in some peoples’ minds, the words below could make washed veggies ready to eat as opposed to having undergone the basics of field dressing. That potentially opens up a whole bunch of interpretive options (like the difference between field processing including washing and those greens {and other products, be they vegetable or meat/raw animal foods} that are actually sold as ready to eat.....).

**Raw agricultural commodity**—A food in its raw or natural state, including fruits which are washed, colored or otherwise treated in their unpeeled, natural form prior to marketing, or as otherwise defined in section 5722 of the Food Safety Act (relating to definitions).

**[Ready-to-eat food]**—Any of the following types of food:

Food in a form that is edible without additional preparation (i) to achieve food safety, such as raw animal-derived foods that have been 46.362 (relating to cooking raw 46.361 or § cooked in accordance with § animal-derived foods; and microwave cooking), or fish that have been 46.364 (relating to parasite destruction in frozen in accordance with § fish other than molluscan shellfish by freezing), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

Food that is raw or partially-undercooked animal-derived (ii) food, where the food facility offering the food has complied with 46.423 46.361(d)(1) and the consumer notification requirements of § § (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

Food that is prepared in accordance with a variance issued (iii) 46.1103 (relating to 46.361(d)(2) and § by the Department under § variances), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

46.285 (relating to washing raw fruits and vegetables). Raw fruits and vegetables that are washed in accordance with § (iv)

Fruits and vegetables that are cooked for hot holding in (v) 46.363 (relating to plant food cooking for hot accordance with § holding).

Potentially hazardous food that is cooked in accordance with (vi) the time and temperature requirements for that specific food in 46.384 (relating 46.361—46.363, and that is cooled as specified in § §§ to potentially hazardous food: cooling).

Plant food with respect to which further washing, cooking (vii) or other processing is not required for food safety, and from which rinds, peels, husks or shells (if naturally present) are removed.

.....

10. Please clarify the need for the different types of operations to actually do this testing in said operation. Consider in the response the situation in which individuals actually need to test surfaces before and after cleaning (as opposed to using the recommended cleaning and sanitizing procedures provided by, for example, the product label or another professional).

Is the five log reduction in bacterial load predicated on the type (genus, species or serotype, for example) of organism?  
Is there any leeway in the log reduction based on the relative risk of the particular/specific organism ?

Is the department prepared to be more specific with respect to identifying those organisms which are defined below as “representative disease microorganisms of public health importance ?

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

11. Please clarify whether such substances that might not yet/currently be defined as sewage (like spray wash off, wash water from floors and milk houses, other waters which could be handled as grey water) will be deemed sewage.

**Sewage**—A substance, which contains waste products or excrements or other discharges from the bodies of human beings or animals and any noxious or deleterious substance being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation.

12. There are large sections quoted below in which the material is proposed rescinded. What will be put in the place of this material, in the sections labeled reserved ? Once those blanks have been filled, will there be a second comment period ?

**Subchapter B.[MANAGEMENT AND PERSONNEL] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter B which appears in 7 Pa. Code pages 46-17—46-28, serial pages (356767), (356768) and (301595)—(301604).)

**Sec.**

- 46.101. (Reserved).
- 46.102. (Reserved).
- 46.111—46.115. (Reserved).
- 46.131—46.137. (Reserved).
- 46.151—46.153. (Reserved).

13. There are large sections quoted below in which the material is proposed rescinded. What will be put in the place of this material, in the sections labeled reserved ? Once those blanks have been filled, will there be a second comment period ?

**Milk and milk products. 46.217. §**

**Milk and milk products [shall be obtained from sources that comply] may be offered for human consumption in a retail food facility if the facility complies 646).** with section 2 of the Milk Sanitation Law (31 P. S. §

( *Editor's Note*As part of this proposed rulemaking, the : 46.218—46.222, 46.241—46.251, Department is proposing to rescind §§ 46.261, 46.262, 46.281—46.286, 46.301—46.307, 46.321—46.323, 46.341—46.344, 46.361—46.366, 46.381—46.385, 46.401, 46.402, 46.421—46.423, 46.441 and 46.461 which appear in 58 Pa. Code pages 46-32— 46-63, serial pages (301608)—(301639).)

**Sec.**

- 46.218—46.222. (Reserved).
- 46.241—46.251. (Reserved).
- 46.261. (Reserved).
- 46.262. (Reserved).
- 46.281—46.286. (Reserved).
- 46.301—46.307. (Reserved).
- 46.321—46.323. (Reserved).
- 46.341—46.344. (Reserved).
- 46.361—46.366. (Reserved).
- 46.381—46.385. (Reserved).
- 46.401. (Reserved).
- 46.402. (Reserved).
- 46.421—46.423. (Reserved).
- 46.441. (Reserved).
- 46.461. (Reserved).

**Subchapter D.[EQUIPMENT, UTENSILS AND LINENS] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter D which appears in 58 Pa. Code pages 46-63—46-97, serial pages (301639), (301640), (351231), (351232) and (301643)—(301673).)

**Sec.**

- 46.501. (Reserved).
- 46.521—46.523. (Reserved).
- 46.541—46.544. (Reserved).
- 46.561—46.563. (Reserved).
- 46.581—46.595. (Reserved).
- 46.611—46.615. (Reserved).
- 46.631—46.634. (Reserved).
- 46.651. (Reserved).
- 46.652. (Reserved).
- 46.671—46.676. (Reserved).
- 46.691—46.693. (Reserved).
- 46.711—46.719. (Reserved).
- 46.731. (Reserved).
- 46.751—46.753. (Reserved).
- 46.771—46.775. (Reserved).

**Subchapter E.[WATER, PLUMBING AND WASTE WATER] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter E which appears in 58 Pa. Code pages 46-97—46-110, serial pages (301673)—(301686).)

**Sec.**

- 46.801—46.806. (Reserved).
- 46.821—46.825. (Reserved).
- 46.841—46.844. (Reserved).
- 46.861—46.863. (Reserved).
- 46.881—46.886. (Reserved).

**Subchapter F.[PHYSICAL FACILITIES] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter F which appears in 58 Pa. Code pages 46-110—46-120, serial pages (301686)—(301696).)

**Sec.**

- 46.901. (Reserved).
- 46.902. (Reserved).
- 46.921. (Reserved).
- 46.922. (Reserved).
- 46.941—46.946. (Reserved).
- 46.961—46.965. (Reserved).
- 46.981. (Reserved).
- 46.982. (Reserved).

**Subchapter G.[POISONOUS OR TOXIC MATERIALS] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter G which appears in 58 Pa. Code pages 46-121—46-125, serial pages (301697)—(301701).)

**Sec.**

- 46.1001. (Reserved).
- 46.1002. (Reserved).
- 46.1021—46.1029. (Reserved).
- 46.1041. (Reserved).

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14. What are the rights of the farm or business owner or employee in an unannounced inspection ?

**ADMINISTRATIVE PROCEDURES Subchapter H.  
ACCESS, APPROVALS AND VARIANCES**

Access to 46.1101. § retail food facilities.

After the Department or licensor presents identification, the person in charge shall allow the Department or licensor to determine if the retail food facility is in compliance with this chapter by allowing access to the facility, allowing inspection and providing information and records specified in this chapter and to which the Department or licensor is entitled under the **[Public Eating and Drinking Places Law, the Food Act] Retail Food Facility Safety Act** and any other relevant statutory or food regulatory authority during the retail food facility's hours of operation and other reasonable times if the facility is not open during normal business hours.

15. While it is nice to know there are variances available, there are a whole lot of \*\*\*\*\* in the material below – such that the intention does not appear clear to those who have read these portions of the proposed document. Please clarify and enhance the continuity of the following points.

**Variances. 46.1103. §**

(a) *Modifications and waivers.* The Department may grant a variance by modifying or waiving the requirements of this chapter if—in the opinion of the Department—a health hazard will not result from the variance. If a variance is granted, the Department will retain the information specified in subsection (b) in its records for the retail food facility **and provide a copy of the approved variance to the licensor if the licensor is an entity other than the Department.**

(b) *Documentation of proposed variance and justification.* Before a variance from a requirement of this chapter is approved, the information that shall be provided by the person requesting the variance and retained in the Department's file on the retail food facility includes the following:

\* \* \* \* \*

(c) *Conformance with approved procedures.* If the Department grants a variance as specified in subsection (a), or an HACCP plan is 46.1122(a), the otherwise required as specified in § retail food facility operator shall do the following:

\* \* \* \* \*

Maintain and provide to the Department (2) **or licensor** 46.1122(b)(4) and (5) that demonstrate that the following are routinely employed: , upon request, records specified in §

\* \* \* \* \*

16. What are the implications and responsibilities for review of plans if the ownership is changing, for example, within a family unit ? What are the implications and responsibilities if the type/structure of ownership changes, for example, from a private holding to an LLC or other business model ?

Where are sections 2 through six below and what do they say ?



**PLAN SUBMISSION AND APPROVAL**

**Facility and operating plans. 46.1121. §**

(a) *When plans are required.* A **retail** food facility licensing applicant or **retail** food facility operator shall have plans and specifications reviewed by the Department or licensor and will submit these properly prepared plans and specifications (as described in subsection (b)) to the Department or licensor for review and approval (using the procedure described in 46.1142 (relating to application procedure for appropriate license § [or registration])) before any of the following:

The construction of a (1) **retail** food facility.

The conversion of an existing structure for use as a (2) **retail** food facility.

The remodeling of a (3) **retail** food facility (including installation and use of any new major food equipment for heating, cooling and hot and cold holding food) or a change of type of **retail** food facility or food operation if the Department or licensor determines that plans and specifications are necessary to ensure compliance with this chapter.

A change of ownership of a (4) **retail** food facility.

(b) *Contents of the plans and specifications.* The plans and specifications for a **retail** food facility shall include (as required by the Department or licensor based on the type of operation, type of food preparation and foods prepared) the following information to demonstrate conformance with this chapter:

Intended menu and consumer advisory intentions, if a consumer advisory is required under (1) **[46.423 (relating to consumer advisory required with respect to animal-derived §) the Model Food Code for animalfoods that are raw, undercooked or not otherwise processed to eliminate pathogens[]]**.

\* \* \* \* \*

Other information that may be required by the Department or (7) licensor for the proper review of the proposed construction, conversion or modification of a **retail** food facility, and requested by the Department or licensor in writing.

17. There are large sections quoted below in which the material is proposed rescinded. What will be put in the place of this material, in the sections labeled reserved ? Once those blanks have been filled, will there be a second comment period ?

Do any and all situations require HACCP plans ?

And, for some educators, consultants and providers, the language of the discipline has changed/is changing from HACCP to Hazard Analysis Preventive Controls. What is the longer term (and short term) implication/s of this change in nomenclature ?

**HACCP plans. 46.1122. §**

(a) *When [a] an HACCP plan is required.*

Before engaging in an activity that requires (1) **[a] an HACCP plan**, a **retail** food facility applicant or **retail** food facility operator shall submit to the Department or licensor for approval a properly prepared HACCP plan as specified in subsection (b) and the relevant provisions of this chapter if any of the following occurs:

Submission of (i) **[a] an HACCP plan** is required according to applicable Federal or State laws.

A variance is required as specified in (ii) **[46.589(b) 46.401 or § 46.361(d)(2), § 46.250(b)(2)(ii), § §] the Model Food Code.**

\* \* \* \* \*

A (2) **retail** food facility applicant or **retail** food facility operator shall have a properly prepared HACCP plan as specified in **[46.402 (relating to reduced oxygen packaging) §] the Model Food Code for reduced oxygen packaging.**

(b) *Contents of [a] an HACCP plan.* For a retail food facility that is required in subsection (a) to have [a] an HACCP plan, the plan and specifications shall indicate the following:

\* \* \* \* \*

18. Are these in addition to the building permit/local inspections ?  
What are the fees for said ?

**Preoperational inspection of construction. 46.1124. §**

The Department or licensor will conduct one or more preoperational inspections to verify that the retail food facility is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and variances granted 46.1103 (relating to variances). The Department or licensor will under § also verify the retail food facility is otherwise in compliance with this chapter[, the Food Act and the Public Eating and Drinking Places Law] and the Retail Food Facility Safety Act.

19. Please reconcile/clarify the words below. The farmers market has one license and each farmer/vendor has an individual license ?

Here – as well as in other portions of this (and other documents) - it seems appropriate and clear to substitute the phrase "compliant at a scale and risk appropriate level." rather than using the word "exemption". Please comment.

**REQUIREMENTS FOR OPERATION**

46.1141. §[Requirement: license or registration] License requirement.

(a) *General requirement.* A person may not operate a retail food facility without a valid [registration issued by the Department, or] license issued by the Department or licensor, unless otherwise provided in subsection (b).

(b) *Exceptions.*

A building, structure or place owned, leased or otherwise in (1) possession of a person or municipal corporation or public or private organization, used or intended to be used by two or more farmers or an association of farmers for the purpose of selling food directly to consumers—otherwise known as a farmer's market—shall be considered to be a single retail food establishment for purposes of registration under 20.14). section 14 of the Food Act (31 P. S. §

(2)] *Exemptions.* The following [food establishments] retail food facilities are exempt from [registration] licensure requirements under [section 14 of the Food Act] the Retail Food Facility Safety Act but remain subject to the inspection provisions and all other provisions of the Retail Food Facility Safety Act:

[Vehicles used primarily for the (i) transportation of a consumer commodity in bulk or quantity to manufacturers, packers, processors or wholesale or retail distributors.

A food establishment in which at least 50% of the (ii) commodities sold were produced on the farm on which the food establishment is located.

A food establishment in which food or beverages are sold only through a vending machine. (iii)

A food establishment in which only prepackaged, nonpotentially hazardous food or beverages are sold. (iv)]

A retail food facility in which only prepackaged, nonpotentially hazardous food or beverages are sold. (1)

A retail food facility that sells only raw agricultural commodities. (2)

A retail food facility that is exempt from licensure by an order of the Secretary that has been published in the (3) *Pennsylvania Bulletin* in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act (relating to license required) if the licensor is the Department.

A retail food facility that is exempt from licensure by an (4) order of the local government unit or units having licensing authority in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act if the licenser is an entity other than the Department.

**(c)License interval.** A license certificate issued by the Department under this chapter sets forth the license expiration date. The license interval varies, in accordance with the risk-based factors identified in the Model Food Code, as follows:

**(1)24-month license interval.**

**(i)** The license interval is 24 months with respect to a retail food facility that:

Serves or sells only pre-packaged, nonpotentially hazardous foods (non-time/temperature control for safety foods). (A)

Prepares only nonpotentially hazardous foods (non-time/temperature control for safety foods). (B)

Heats only commercially processed, potentially hazardous (C) foods (time/temperature Control for Safety Food (TCS foods)) for hot holding.

Does not cool potentially hazardous foods (TCS foods) for hot holding. (D)

Examples of the type of retail food facility that would (ii) typically be subject to the 24-month license interval in subparagraph (i) are convenience store operations, hot dog carts and coffee shops.

The license interval for a retail food facility is 24 (iii) months if the retail food facility would otherwise be subject to the 18-month license interval in paragraph (2) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors identified in the Model Food Code. These risk factors include:

A history of noncompliance with provisions regarding foodborne illness risk factors or critical items. (A)

Specialized processes conducted. (B)

Food preparation a day in advance of service. (C)

Large numbers of people served. (D)

A history of foodborne illnesses or complaints, or both. (E)

Highly susceptible population served. (F)

**(2)18-month license interval.**

The license interval is 18 months with respect to a retail food facility that: (i)

Has a limited menu. (A)

Prepares/cooks and serves most products immediately. (B)

May involve hot and cold holding of potentially hazardous foods (TCS foods) after preparation or cooking. (C)

Limits complex preparation of potentially hazardous foods (D) (TCS foods) requiring cooking, cooling, and reheating for hot holding to only a few potentially hazardous foods (TCS foods).

Examples of the type of retail food facility that would (ii) typically be subject to the 18-month license interval in subparagraph (i) are retail food store operations that have only a limited number of separate departments (such as deli, bakery, produce, seafood or meat area), institutional facilities that do not serve a highly susceptible population and quick food service operations.

The license interval for a retail food facility is 18 (iii) months if the retail food facility would otherwise be subject to the 12-month license interval in paragraph (3) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

The license interval for a retail food facility is 18 months (iv) if the retail food facility would otherwise be subject to the 24-month license interval in paragraph (1), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

**(3)12-month license interval.**

The license interval is 12 months with respect to a retail food facility that: (i)

Has an extensive menu and entails handling of raw ingredients. (A)

Has complex preparation including cooking, cooling and (B) reheating for hot holding involves many potentially hazardous foods (TCS foods).

Uses a variety of processes that require hot and cold holding of potentially hazardous food (TCS foods). (C)

Examples of the type of retail food facility that would (ii) typically be subject to the 12-month license interval in subparagraph (i) are full service restaurants or retail food stores with a full range of separate departments (such as deli, bakery, produce, seafood or meat area) that includes ready-to-eat foods from a café, salad bar or hot food bar.

The license interval for a retail food facility is 12 (iii) months if the retail food facility would otherwise be subject to the 6-month license interval in paragraph (4) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

The license interval for a retail food facility (iv) is 12 months if the retail food facility would otherwise be subject to the 18-month license interval in paragraph (2), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

**(4)6-month license interval.**

The license interval is 6 months with respect to a retail (i) food facility that serves a highly susceptible population or that conducts specialized processes such as smoking, curing or reduced oxygen packaging to extend shelf life.

Examples of the type of retail food facility that would (ii) typically be subject to the 6-month license interval in subparagraph (i) are preschools, hospitals, nursing homes and establishments conducting processing at retail.

The license interval for a retail food facility is 6 months (iii) if the retail food facility would otherwise be subject to the 12-month license interval in paragraph (3), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

Application procedure for appropriate license 46.1142. § [or registration].

Prior to the opening of a retail food facility, the operator shall contact the Department or licensor to obtain the appropriate application form for the required license [or registration]. The Department or licensor will supply the applicant with the appropriate form, based upon the type of retail food facility involved. [If the food facility is a public eating and drinking place, the applicant shall obtain a license. If the food facility is a retail food establishment, the applicant must obtain a registration. A single location (such as a grocery store that also serves hot ready-to-eat might require both a license and a registration. foods)]

20. There are a whole lot of \*\*\*\*\* in the material below – such that the intention does not appear clear to those who have read these portions of the proposed document. Please clarify and enhance the continuity of the following points.

Please clarify the need for new license around change in ownership as queried above (for example, changes within the family, changes in business structure and category).

**Issuance. 46.1143. §**

(a) *New, converted or remodeled retail food facilities.* For retail food facilities that are required to submit plans as specified in 46.1121(a) (relating to facility and operating plans), the Department § [will issue a registration, or the Department] or licensor will issue a license to the applicant after the following occur:

\* \* \* \* \*

(b) *License [or registration] renewal.* The retail food facility operator of an existing retail food facility shall submit an application, the required fee and be in compliance with this chapter prior to issuance [by the Department of a renewed registration or license, or the issuance] of a renewed license by the Department or a licensor.

(c) *Change of ownership.* Licenses [and registrations] are nontransferable. New owners shall apply to the Department or 46.1142 (relating to application procedure licensor in accordance with § for appropriate license [or registration]).

Conditions of retention: responsibilities of the 46.1144. § retail food facility operator.

To retain a license [or registration] issued by the Department or licensor under this chapter, a retail food facility operator shall do the following:

Post the license (1) [or registration] in a location in the retail food facility that is conspicuous to consumers and the Department or licensor.

\* \* \* \* \*

If a (3) **retail 46.1122(a)** (relating to HACCP plans) to operate under food facility is required in § **[a] an 46.1103(c)**. HACCP plan, comply with the plan as specified in § Immediately contact the Department or licensor to report an illness of a food employee as specified in (4) **[46.111(b) (relating to duty to report disease or medical condition) §] Subpart 2-201 of the Model Food Code**. Immediately discontinue operations and notify the Department or (5) licensor if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition or other circumstance that may endanger public health. A **retail** food facility operator need not discontinue operations in an area of a facility that is unaffected by the imminent health hazard. Not resume operations discontinued in accordance with paragraph (5) or otherwise according to the (6) **[Public Eating and Drinking Places Law or the Food Act] Retail Food Facility Safety Act** until approval is obtained from the Department or licensor. Allow representatives of the Department or licensor access to the (7) **retail 46.1101** (relating to access to food facility as specified in § **retail food facilities**).

\* \* \* \* \*

- (9) **[Upgrade or replace refrigeration 46.385(a)(3) (relating to potentially equipment as specified in § hazardous food: hot and cold holding), by December 13, 2008, if the circumstances specified in paragraph (8)(i) and (ii) do not occur first, 46.1103. and unless a variance has been approved as specified in §**
- (10)]** Comply with directives of the Department or licensor including time frames for corrective actions specified in inspection reports, notices, orders, warnings and other directives issued by the Department or licensor in regard to the operator's **retail** food facility or in response to community emergencies.
- [(11)] (10)**Accept notices issued and served by the Department or licensor according to the **[Public Eating and Drinking Places Law or the Food Act] Retail Food Facility Safety Act**.
- (11)** Remit a fee owed to the Department under section 5703(j) of the Retail Food Facility Safety Act (relating to license required) within the time prescribed by the Department.
- (12)** Remit a civil penalty assessed against the retail food facility operator under the Retail Food Facility Safety Act or this chapter within 30 days of the later of either of the following:
  - (i)** The effective date of the final adjudication assessing the civil penalty.
  - (ii)** The expiration of the applicable deadline by which the final adjudication could be appealed to an appellate court of the Commonwealth.

21. There are large sections quoted below in which the material is proposed rescinded. What will be put in the place of this material, in the sections labeled reserved ? Once those blanks have been filled, will there be a second comment period ?

Please explain why the collection of these “odd definitions” are presented in this portion of the document rather than in the prodromal section with the remainder of the definitions.

**MISCELLANEOUS PROVISIONS Subpart C.  
FOOD EMPLOYEE CERTIFICATION CHAPTER 76.**

( *Editor's Note*As part of this proposed rulemaking, the : 76.1—76.17 and 76.19 which appear Department is proposing to rescind §§ in 58 Pa. Code pages 76-1—76-18, serial pages (304941)—(304958).) Sec.

76.1—76.17. (Reserved).

76.19. (Reserved).

( *Editor's Note*Sections 76.20 and 79.21 are new and printed in regular type to enhance readability.) :

**Definitions. 76.20. §**

The following words and terms, when used in this chapter, have the following meanings, unless otherwise defined in Chapter 46 (relating to food code):

*Act6501—6510*. —The Food Employee Certification Act (3 Pa.C.S. §§

*Certificate*—A certificate of completion issued by a certification program that has been evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

*Conference for Food Protection*—An independent, National voluntary nonprofit organization to promote food safety and consumer protection. Participants in this organization include Federal, State and local regulatory agencies, universities, test providers, certifying organizations, consumer groups, food service and retail store trade associations, and retail food facility operators. The objectives of the organization include identifying and addressing food safety problems and promoting uniformity of regulations in food protection.

*Department*—The Department of Agriculture of the Commonwealth.

*Employee5702* (relating to definitions). —As defined in 3 Pa.C.S. §

**Certification programs. 76.21. §**

(a) *General recognition of certification programs*. For purposes of compliance with the act, the Department recognizes certification programs, including examinations developed under those programs, that are evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

(b) *List of acceptable certification programs*. The Department maintains a current list of Department-recognized certification programs. The Department will:

Publish the current list in the (1) *Pennsylvania Bulletin* annually and when the list is revised.

Post the current list on the Department's web site at [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us). (2)

Provide a copy of the current list upon request directed to the (3) Department's Bureau of Food Safety and Laboratory Services at (717) 787-4315 or the following mailing address:

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

[Pa.B. Doc. No. 12-1514. Filed for public inspection August 10, 2012, 9:00 a.m.]

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September 8, 2012

To whom it may concern:

These comments are being submitted on behalf of the Pennsylvania Association for Sustainable Agriculture, Brian Snyder, Executive Director.

I have provided numbered comments as well as quoted text to which the comments refer. The comments below begin in reflecting the material found in the prodromal section of the document in which definitions are stated and move sequentially through the entire document.

Please acknowledge receipt of these comments.

Sincerely,

Susan Beal, DVM  
Agricultural Science Advisor  
Pennsylvania Association for Sustainable Agriculture  
PO Box 419, Millheim, PA 16854  
[www.pasafarming.org](http://www.pasafarming.org)  
Office: 814.349.9856  
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.....

1. Why does the definition of comingle consider only shellstock ? Typically the term comingle has been used to define any combining of products from different sources, growers or harvest locations. It seems remiss to limit the definition of comingle to shellstock alone.

***Comingle*—To combine shellstock harvested on different days or from different growing areas as identified on the tag or label or to combine shucked shellfish from containers with different container codes or different shucking dates.**

2. Regarding the definition of an “outbreak,” please clarify your use of the word case.

It may, indeed, be more appropriate to use the word occurrence in this situation, though we appreciate it is not the typical language of epidemiological discipline. In this use of the word, an occurrence could be defined as any occasion/location at which any number of individual have been documented as becoming ill from a presumed single source.

Two or more such occurrences would constitute an outbreak. In the absence of two or more such occurrences, then the isolated occurrence would be simply that – an occurrence.

***Foodborne disease outbreak*—The occurrence of two or more cases of a similar illness after ingestion of a common food.**

3. With respect to these words extracted from the totality of the passages quoted below, please clarify how the departments might view a CSA (community shared agriculture) making deliveries to homes, markets or collective drop off points.

Extracted segment:

**(A) Do not provide food to the consumer either directly or indirectly (such as through the home delivery of groceries).**

Total passage:

*Food establishment—*

A (i) **[retail food store and 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.**

The term (ii) **[includes those portions of public eating and drinking licensees which offer food for sale for off-premises consumption, except] 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.**

The term is synonymous with the term "food processing plant" in the Model Food Code. (iii)

**[Food facility—A public eating or drinking place or a retail food establishment. The term does not include the following:**

**A food service facility provided by or at an organized camp or campground. (i)**

**A food service facility provided by or at a school. (ii)**

**A food service facility at an institution such as a nursing home or hospital. (iii)**

**Any other food service facility that is not a public eating or drinking place. (iv)**

**Food processing plants, warehousing establishments and other food establishments that comply with the following: (v)**

**Are not retail food establishments. (A)**

**Do not provide food to the consumer either directly or indirectly (such as through the home delivery of groceries). (B)**

**Applicable Federal regulations. (C)**

**Food facility operator—The entity that is legally responsible for the operation of the food facility, such as the owner, owner's agent or other person.**

**Food facility premises—The food facility, its contents and the contiguous land or property under the control of the food facility operator. If a food facility is a component of a larger operation, such as a hotel, motel, shopping mall or public campground, and that larger operation is also under the control of the food facility operator, that larger operation is part of the food facility premises to the extent it may impact the food facility, its personnel or its operations.**

**Food processing plant—A commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food facility.]**



4. Please clarify that rabbits, be they captive bred or wild game, are considered game in Pennsylvania. Please offer some clarity about the requirements for slaughter and market of such animals.

5. Do the rules of the PDA still supercede those of the county (and other) departments of health ?

*Licensor*—Includes the following:

The county department of health or joint-county department of health, whenever the (i) **[public eating or drinking place] retail food facility** is located in a political subdivision which is under the jurisdiction of a county department of health or joint-county department of health.

The health authorities of cities, boroughs, incorporated towns and first-class townships, whenever the (ii) **[public eating or drinking place] retail food facility** is located in a city, borough, incorporated town or first-class township not under the jurisdiction of a county department of health or joint-county department of health.

The health authorities of second class townships and second (iii) class townships which have adopted a home rule charter which elect to issue licenses under the **[Public Eating and Drinking Places Law] Retail Food Facility Safety Act** whenever **[the public eating and drinking place] a retail food facility** is located in **[the] a second class township or second class township** which has adopted a home rule charter not under the jurisdiction of a county department of health or joint-county department of health.

The Department, whenever the (iv) **[public eating and drinking place] retail food facility** is located in any other area of this Commonwealth.

6. Where does the definition of a mobile food facility – particularly that part that states cart, basket, box or similar structure – leave a CSA and that “basket, box or similar structure” in which the CSA person might deliver the food directly to the buyer and/or to a drop off location ?

**[Mobile food facility—Any stationary, movable or temporary food facility—such as a stand, vehicle, cart, basket, box or similar structure from which food is stored, prepared, processed, distributed or sold—which physically locates at one site or location for no more than 14 consecutive days, whether operating continuously or not during this time. The term does not include a food facility that is physically located at one site for more than 14 consecutive days.]**

7. What if there is an unannounced inspection ? Is the most “senior” “responsible” person on site at that moment deemed the person in charge ?

Can the employee/owner ask that the inspector return at another time ?

*Person in charge*—**[The individual present at a food facility responsible for the operation at the time of inspection.] A person designated by a retail food facility operator to be present at a retail food facility and responsible for the operation of the retail food facility at the time of inspection.**

8. This is a rather odd criteria, we propose, though do appreciate it’s a broader definition from other documents. Please provide clarification around such situations in which individuals or families might need to have water hauled in situations, be they temporary or permanent,

where, for example, their water is not good because of other actions (contaminated wells come to mind).

**Public water system**—A system which provides water to the public for human consumption, and which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, or as otherwise specified in 25 Pa. Code Chapter 109 (relating to safe drinking water).

The term includes collection, treatment, storage and (i) distribution facilities under control of the operator of the system and used in connection with the system.

The term also includes a system which provides water for bottling or bulk hauling for human consumption. (ii)

9. Please provide clarification around the term “ready to eat” foods since there is so much potential for odd interpretations here. One could read this with greens and such in mind – and, in some peoples’ minds, the words below could make washed veggies ready to eat as opposed to having undergone the basics of field dressing. That potentially opens up a whole bunch of interpretive options (like the difference between field processing including washing and those greens {and other products, be they vegetable or meat/raw animal foods} that are actually sold as ready to eat.....).

**Raw agricultural commodity**—A food in its raw or natural state, including fruits which are washed, colored or otherwise treated in their unpeeled, natural form prior to marketing, or as otherwise defined in section 5722 of the Food Safety Act (relating to definitions).

**[Ready-to-eat food**—Any of the following types of food:

Food in a form that is edible without additional preparation (i) to achieve food safety, such as raw animal-derived foods that have been 46.362 (relating to cooking raw 46.361 or § cooked in accordance with § animal-derived foods; and microwave cooking), or fish that have been 46.364 (relating to parasite destruction in frozen in accordance with § fish other than molluscan shellfish by freezing), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

Food that is raw or partially-undercooked animal-derived (ii) food, where the food facility offering the food has complied with 46.423 46.361(d)(1) and the consumer notification requirements of § § (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

Food that is prepared in accordance with a variance issued (iii) 46.1103 (relating to 46.361(d)(2) and § by the Department under § variances), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

46.285 (relating to washing raw fruits and vegetables). Raw fruits and vegetables that are washed in accordance with § (iv)

Fruits and vegetables that are cooked for hot holding in (v) 46.363 (relating to plant food cooking for hot accordance with § holding).

Potentially hazardous food that is cooked in accordance with (vi) the time and temperature requirements for that specific food in 46.384 (relating 46.361—46.363, and that is cooled as specified in § §§ to potentially hazardous food: cooling).

Plant food with respect to which further washing, cooking (vii) or other processing is not required for food safety, and from which rinds, peels, husks or shells (if naturally present) are removed.

.....

10. Please clarify the need for the different types of operations to actually do this testing in said operation. Consider in the response the situation in which individuals actually need to test surfaces before and after cleaning (as opposed to using the recommended cleaning and sanitizing procedures provided by, for example, the product label or another professional).

Is the five log reduction in bacterial load predicated on the type (genus, species or serotype, for example) of organism? Is there any leeway in the log reduction based on the relative risk of the particular/specific organism ?

Is the department prepared to be more specific with respect to identifying those organisms which are defined below as “representative disease microorganisms of public health importance ?

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

11. Please clarify whether such substances that might not yet/currently be defined as sewage (like spray wash off, wash water from floors and milk houses, other waters which could be handled as grey water) will be deemed sewage.

**Sewage**—A substance, which contains waste products or excrements or other discharges from the bodies of human beings or animals and any noxious or deleterious substance being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation.

12. There are large sections quoted below in which the material is proposed rescinded. What will be put in the place of this material, in the sections labeled reserved ? Once those blanks have been filled, will there be a second comment period ?

**Subchapter B.[MANAGEMENT AND PERSONNEL] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter B which appears in 7 Pa. Code pages 46-17—46-28, serial pages (356767), (356768) and (301595)—(301604).)

**Sec.**

46.101. (Reserved).

46.102. (Reserved).

46.111—46.115. (Reserved).

46.131—46.137. (Reserved).

46.151—46.153. (Reserved).

13. There are large sections quoted below in which the material is proposed rescinded. What will be put in the place of this material, in the sections labeled reserved ? Once those blanks have been filled, will there be a second comment period ?

**Milk and milk products. 46.217. §**

Milk and milk products [shall be obtained from sources that comply] may be offered for human consumption in a retail food facility if the facility complies 646). with section 2 of the Milk Sanitation Law (31 P.S. §

( *Editor's Note*As part of this proposed rulemaking, the : 46.218—46.222, 46.241—46.251, Department is proposing to rescind §§ 46.261, 46.262, 46.281—46.286, 46.301—46.307, 46.321—46.323, 46.341—46.344, 46.361—46.366, 46.381—46.385, 46.401, 46.402, 46.421—46.423, 46.441 and 46.461 which appear in 58 Pa. Code pages 46-32— 46-63, serial pages (301608)—(301639).)

**Sec.**

46.218—46.222. (Reserved).

46.241—46.251. (Reserved).

46.261. (Reserved).

46.262. (Reserved).

46.281—46.286. (Reserved).

46.301—46.307. (Reserved).

46.321—46.323. (Reserved).

46.341—46.344. (Reserved).

46.361—46.366. (Reserved).

46.381—46.385. (Reserved).

46.401. (Reserved).

46.402. (Reserved).

46.421—46.423. (Reserved).

46.441. (Reserved).

46.461. (Reserved).

**Subchapter D.[EQUIPMENT, UTENSILS AND LINENS] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter D which appears in 58 Pa. Code pages 46-63—46-97, serial pages (301639), (301640), (351231), (351232) and (301643)—(301673).)

**Sec.**

46.501. (Reserved).

46.521—46.523. (Reserved).

46.541—46.544. (Reserved).

46.561—46.563. (Reserved).

46.581—46.595. (Reserved).

46.611—46.615. (Reserved).

46.631—46.634. (Reserved).

46.651. (Reserved).

46.652. (Reserved).

46.671—46.676. (Reserved).

46.691—46.693. (Reserved).

46.711—46.719. (Reserved).

46.731. (Reserved).

46.751—46.753. (Reserved).

46.771—46.775. (Reserved).

**Subchapter E.[WATER, PLUMBING AND WASTE WATER] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter E which appears in 58 Pa. Code pages 46-97—46-110, serial pages (301673)—(301686).)

**Sec.**

46.801—46.806. (Reserved).

46.821—46.825. (Reserved).

46.841—46.844. (Reserved).

46.861—46.863. (Reserved).

46.881—46.886. (Reserved).

**Subchapter F.[PHYSICAL FACILITIES] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter F which appears in 58 Pa. Code pages 46-110—46-120, serial pages (301686)—(301696).)

**Sec.**

46.901. (Reserved).

46.902. (Reserved).

46.921. (Reserved).

46.922. (Reserved).

46.941—46.946. (Reserved).

46.961—46.965. (Reserved).

46.981. (Reserved).

46.982. (Reserved).

**Subchapter G.[POISONOUS OR TOXIC MATERIALS] (Reserved)**

( *Editor's Note*As part of this proposed rulemaking, the : Department is proposing to rescind Subchapter G which appears in 58 Pa. Code pages 46-121—46-125, serial pages (301697)—(301701).)

**Sec.**

46.1001. (Reserved).

46.1002. (Reserved).

46.1021—46.1029. (Reserved).

46.1041. (Reserved).

.....

14. What are the rights of the farm or business owner or employee in an unannounced inspection ?

**ADMINISTRATIVE PROCEDURES Subchapter H.  
ACCESS, APPROVALS AND VARIANCES**

Access to 46.1101. § retail food facilities.

After the Department or licensor presents identification, the person in charge shall allow the Department or licensor to determine if the retail food facility is in compliance with this chapter by allowing access to the facility, allowing inspection and providing information and records specified in this chapter and to which the Department or licensor is entitled under the **[Public Eating and Drinking Places Law, the Food Act] Retail Food Facility Safety Act** and any other relevant statutory or food regulatory authority during the retail food facility's hours of operation and other reasonable times if the facility is not open during normal business hours.

15. While it is nice to know there are variances available, there are a whole lot of \*\*\*\*\* in the material below – such that the intention does not appear clear to those who have read these portions of the proposed document. Please clarify and enhance the continuity of the following points.

**Variances. 46.1103. §**

(a) *Modifications and waivers.* The Department may grant a variance by modifying or waiving the requirements of this chapter if—in the opinion of the Department—a health hazard will not result from the variance. If a variance is granted, the Department will retain the information specified in subsection (b) in its records for the retail food facility and **provide a copy of the approved variance to the licensor if the licensor is an entity other than the Department.**

(b) *Documentation of proposed variance and justification.* Before a variance from a requirement of this chapter is approved, the information that shall be provided by the person requesting the variance and retained in the Department's file on the retail food facility includes the following:

\* \* \* \* \*

(c) *Conformance with approved procedures.* If the Department grants a variance as specified in subsection (a), or an HACCP plan is 46.1122(a), the otherwise required as specified in § retail food facility operator shall do the following:

\* \* \* \* \*

Maintain and provide to the Department (2) or licensor 46.1122(b)(4) and (5) that demonstrate that the following are routinely employed: , upon request, records specified in §

\* \* \* \* \*

16. What are the implications and responsibilities for review of plans if the ownership is changing, for example, within a family unit ? What are the implications and responsibilities if the type/structure of ownership changes, for example, from a private holding to an LLC or other business model ?

Where are sections 2 through six below and what do they say ?

**PLAN SUBMISSION AND APPROVAL**

**Facility and operating plans. 46.1121. §**

(a) *When plans are required.* A retail food facility licensing applicant or retail food facility operator shall have plans and specifications reviewed by the Department or licensor and will submit these properly prepared plans and specifications (as described in subsection (b)) to the Department or licensor for review and approval (using the procedure described in 46.1142

(relating to application procedure for appropriate license § [or registration])) before any of the following:

The construction of a (1) **retail** food facility.

The conversion of an existing structure for use as a (2) **retail** food facility.

The remodeling of a (3) **retail** food facility (including installation and use of any new major food equipment for heating, cooling and hot and cold holding food) or a change of type of **retail** food facility or food operation if the Department or licensor determines that plans and specifications are necessary to ensure compliance with this chapter.

A change of ownership of a (4) **retail** food facility.

(b) *Contents of the plans and specifications.* The plans and specifications for a **retail** food facility shall include (as required by the Department or licensor based on the type of operation, type of food preparation and foods prepared) the following information to demonstrate conformance with this chapter:

Intended menu and consumer advisory intentions, if a consumer advisory is required under (1) **[46.423 (relating to consumer advisory required with respect to animal-derived §) the Model Food Code for animalfoods that are raw, undercooked or not otherwise processed to eliminate pathogens[]]**.

\* \* \* \* \*

Other information that may be required by the Department or (7) licensor for the proper review of the proposed construction, conversion or modification of a **retail** food facility, and requested by the Department or licensor in writing.

17. There are large sections quoted below in which the material is proposed rescinded. What will be put in the place of this material, in the sections labeled reserved ? Once those blanks have been filled, will there be a second comment period ?

Do any and all situations require HACCP plans ?

And, for some educators, consultants and providers, the language of the discipline has changed/is changing from HACCP to Hazard Analysis Preventive Controls. What is the longer term (and short term) implication/s of this change in nomenclature ?

**HACCP plans. 46.1122. §**

(a) *When [a] an HACCP plan is required.*

Before engaging in an activity that requires (1) **[a] an HACCP plan, a retail food facility applicant or retail food facility operator shall submit to the Department or licensor for approval a properly prepared HACCP plan as specified in subsection (b) and the relevant provisions of this chapter if any of the following occurs:**

Submission of (i) **[a] an HACCP plan is required according to applicable Federal or State laws.**

A variance is required as specified in (ii) **[46.589(b) 46.401 or § 46.361(d)(2), § 46.250(b)(2)(ii), § §] the Model Food Code.**

\* \* \* \* \*

A (2) **retail food facility applicant or retail food facility operator shall have a properly prepared HACCP plan as specified in [46.402 (relating to reduced oxygen packaging) §] the Model Food Code for reduced oxygen packaging.**



(b) *Contents of [a] an HACCP plan.* For a **retail** food facility that is required in subsection (a) to have [a] an HACCP plan, the plan and specifications shall indicate the following:

\* \* \* \* \*

18. Are these in addition to the building permit/local inspections ?  
What are the fees for said ?

**Preoperational inspection of construction. 46.1124. §**

The Department or licensor will conduct one or more preoperational inspections to verify that the **retail** food facility is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and variances granted 46.1103 (relating to variances). The Department or licensor will under § also verify the **retail** food facility is otherwise in compliance with this chapter[, the Food Act and the Public Eating and Drinking Places Law] and the **Retail Food Facility Safety Act**.

19. Please reconcile/clarify the words below. The farmers market has one license and each farmer/vendor has an individual license ?

Here – as well as in other portions of this (and other documents) - it seems appropriate and clear to substitute the phrase "compliant at a scale and risk appropriate level." rather than using the word "exemption". Please comment.

**REQUIREMENTS FOR OPERATION**

46.1141. §[Requirement: license or registration] **License requirement.**

(a) *General requirement.* A person may not operate a **retail** food facility without a valid [registration issued by the Department, or] license issued by the Department or licensor, unless otherwise provided in subsection (b).

(b) *Exceptions.*

**A building, structure or place owned, leased or otherwise in (1) possession of a person or municipal corporation or public or private organization, used or intended to be used by two or more farmers or an association of farmers for the purpose of selling food directly to consumers—otherwise known as a farmer's market—shall be considered to be a single retail food establishment for purposes of registration under 20.14). section 14 of the Food Act (31 P. S. §**

**(2)] Exemptions.** The following [food establishments] **retail food facilities** are exempt from [registration] licensure requirements under [section 14 of the Food Act] the **Retail Food Facility Safety Act** but remain subject to the inspection provisions and all other provisions of the **Retail Food Facility Safety Act**:

[Vehicles used primarily for the (i) transportation of a consumer commodity in bulk or quantity to manufacturers, packers, processors or wholesale or retail distributors.

A food establishment in which at least 50% of the (ii) commodities sold were produced on the farm on which the food establishment is located.

A food establishment in which food or beverages are sold only through a vending machine. (iii)

A food establishment in which only prepackaged, nonpotentially hazardous food or beverages are sold. (iv)]

A retail food facility in which only prepackaged, nonpotentially hazardous food or beverages are sold. (1)

A retail food facility that sells only raw agricultural commodities. (2)

A retail food facility that is exempt from licensure by an order of the Secretary that has been published in the (3) *Pennsylvania Bulletin* in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act (relating to license required) if the licensor is the Department.

A retail food facility that is exempt from licensure by an (4) order of the local government unit or units having licensing authority in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act if the licensor is an entity other than the Department.

(c) *License interval.* A license certificate issued by the Department under this chapter sets forth the license expiration date. The license interval varies, in accordance with the risk-based factors identified in the Model Food Code, as follows:

(1) *24-month license interval.*

(i) The license interval is 24 months with respect to a retail food facility that:

Serves or sells only pre-packaged, nonpotentially hazardous foods (non-time/temperature control for safety foods). (A)

Prepares only nonpotentially hazardous foods (non-time/temperature control for safety foods). (B)

Heats only commercially processed, potentially hazardous (C) foods (time/temperature Control for Safety Food (TCS foods)) for hot holding.

Does not cool potentially hazardous foods (TCS foods) for hot holding. (D)

Examples of the type of retail food facility that would (ii) typically be subject to the 24-month license interval in subparagraph (i) are convenience store operations, hot dog carts and coffee shops.

The license interval for a retail food facility is 24 (iii) months if the retail food facility would otherwise be subject to the 18-month license interval in paragraph (2) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors identified in the Model Food Code. These risk factors include:

A history of noncompliance with provisions regarding foodborne illness risk factors or critical items. (A)

Specialized processes conducted. (B)

Food preparation a day in advance of service. (C)

Large numbers of people served. (D)

A history of foodborne illnesses or complaints, or both. (E)

Highly susceptible population served. (F)

(2) *18-month license interval.*

The license interval is 18 months with respect to a retail food facility that: (i)

Has a limited menu. (A)

Prepares/cooks and serves most products immediately. (B)

May involve hot and cold holding of potentially hazardous foods (TCS foods) after preparation or cooking. (C)

Limits complex preparation of potentially hazardous foods (D) (TCS foods) requiring cooking, cooling, and reheating for hot holding to only a few potentially hazardous foods (TCS foods).

Examples of the type of retail food facility that would (ii) typically be subject to the 18-month license interval in subparagraph (i) are retail food store operations that have only a

limited number of separate departments (such as deli, bakery, produce, seafood or meat area), institutional facilities that do not serve a highly susceptible population and quick food service operations.

The license interval for a retail food facility is 18 (iii) months if the retail food facility would otherwise be subject to the 12-month license interval in paragraph (3) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

The license interval for a retail food facility is 18 months (iv) if the retail food facility would otherwise be subject to the 24-month license interval in paragraph (1), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

**(3) 12-month license interval.**

The license interval is 12 months with respect to a retail food facility that: (i)

Has an extensive menu and entails handling of raw ingredients. (A)

Has complex preparation including cooking, cooling and (B) reheating for hot holding involves many potentially hazardous foods (TCS foods).

Uses a variety of processes that require hot and cold holding of potentially hazardous food (TCS foods). (C)

Examples of the type of retail food facility that would (ii) typically be subject to the 12-month license interval in subparagraph (i) are full service restaurants or retail food stores with a full range of separate departments (such as deli, bakery, produce, seafood or meat area) that includes ready-to-eat foods from a café, salad bar or hot food bar.

The license interval for a retail food facility is 12 (iii) months if the retail food facility would otherwise be subject to the 6-month license interval in paragraph (4) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

The license interval for a retail food facility (iv) is 12 months if the retail food facility would otherwise be subject to the 18-month license interval in paragraph (2), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

**(4) 6-month license interval.**

The license interval is 6 months with respect to a retail (i) food facility that serves a highly susceptible population or that conducts specialized processes such as smoking, curing or reduced oxygen packaging to extend shelf life.

Examples of the type of retail food facility that would (ii) typically be subject to the 6-month license interval in subparagraph (i) are preschools, hospitals, nursing homes and establishments conducting processing at retail.

The license interval for a retail food facility is 6 months (iii) if the retail food facility would otherwise be subject to the 12-month license interval in paragraph (3), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

Application procedure for appropriate license 46.1142. § [or registration].

Prior to the opening of a retail food facility, the operator shall contact the Department or licensor to obtain the appropriate application form for the required license [or registration]. The Department or licensor will supply the applicant with the appropriate form, based upon the

type of retail food facility involved. [If the food facility is a public eating and drinking place, the applicant shall obtain a license. If the food facility is a retail food establishment, the applicant must obtain a registration. A single location (such as a grocery store that also serves hot ready-to-eat might require both a license and a registration. foods)]

20. There are a whole lot of \*\*\*\*\* in the material below – such that the intention does not appear clear to those who have read these portions of the proposed document. Please clarify and enhance the continuity of the following points.

Please clarify the need for new license around change in ownership as queried above (for example, changes within the family, changes in business structure and category).

**Issuance. 46.1143. §**

(a) *New, converted or remodeled retail food facilities.* For retail food facilities that are required to submit plans as specified in 46.1121(a) (relating to facility and operating plans), the Department § [will issue a registration, or the Department] or licensor will issue a license to the applicant after the following occur:

\* \* \* \* \*

(b) *License [or registration] renewal.* The retail food facility operator of an existing retail food facility shall submit an application, the required fee and be in compliance with this chapter prior to issuance [by the Department of a renewed registration or license, or the issuance] of a renewed license by the Department or a licensor.

(c) *Change of ownership.* Licenses [and registrations] are nontransferable. New owners shall apply to the Department or 46.1142 (relating to application procedure licensor in accordance with § for appropriate license [or registration]).

Conditions of retention: responsibilities of the 46.1144. § retail food facility operator.

To retain a license [or registration] issued by the Department or licensor under this chapter, a retail food facility operator shall do the following:

Post the license (1) [or registration] in a location in the retail food facility that is conspicuous to consumers and the Department or licensor.

\* \* \* \* \*

If a (3) retail 46.1122(a) (relating to HACCP plans) to operate under food facility is required in § [a] an 46.1103(c). HACCP plan, comply with the plan as specified in §

Immediately contact the Department or licensor to report an illness of a food employee as specified in (4) [46.111(b) (relating to duty to report disease or medical condition) §]

**Subpart 2-201 of the Model Food Code.**

Immediately discontinue operations and notify the Department or (5) licensor if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition or other circumstance that may endanger public health. A retail food facility operator need not discontinue operations in an area of a facility that is unaffected by the imminent health hazard. Not resume operations discontinued in accordance with paragraph (5) or otherwise according to the (6) [Public Eating and Drinking Places Law or the Food Act] Retail Food Facility Safety Act until approval is obtained from the Department or licensor.

Allow representatives of the Department or licensor access to the (7) retail 46.1101 (relating to access to food facility as specified in § retail food facilities).

\* \* \* \* \*

(9) [Upgrade or replace refrigeration 46.385(a)(3) (relating to potentially hazardous food: hot and cold holding), by December 13, 2008, if the circumstances specified in paragraph (8)(i) and (ii) do not occur first, 46.1103. and unless a variance has been approved as specified in §

(10)] Comply with directives of the Department or licensor including time frames for corrective actions specified in inspection reports, notices, orders, warnings and other directives issued by the Department or licensor in regard to the operator's retail food facility or in response to community emergencies.

[(11)] (10)Accept notices issued and served by the Department or licensor according to the [Public Eating and Drinking Places Law or the Food Act] Retail Food Facility Safety Act.

(11) Remit a fee owed to the Department under section 5703(j) of the Retail Food Facility Safety Act (relating to license required) within the time prescribed by the Department.

(12) Remit a civil penalty assessed against the retail food facility operator under the Retail Food Facility Safety Act or this chapter within 30 days of the later of either of the following:

(i) The effective date of the final adjudication assessing the civil penalty.

(ii) The expiration of the applicable deadline by which the final adjudication could be appealed to an appellate court of the Commonwealth.

21. There are large sections quoted below in which the material is proposed rescinded. What will be put in the place of this material, in the sections labeled reserved ? Once those blanks have been filled, will there be a second comment period ?

Please explain why the collection of these “odd definitions” are presented in this portion of the document rather than in the prodromal section with the remainder of the definitions.

**MISCELLANEOUS PROVISIONS Subpart C.**  
**FOOD EMPLOYEE CERTIFICATION CHAPTER 76.**

( *Editor's Note*As part of this proposed rulemaking, the : 76.1—76.17 and 76.19 which appear Department is proposing to rescind §§ in 58 Pa. Code pages 76-1—76-18, serial pages (304941)—(304958).)

Sec.

76.1—76.17. (Reserved).

76.19. (Reserved).

( *Editor's Note*Sections 76.20 and 79.21 are new and printed in regular type to enhance readability.) :

**Definitions. 76.20. §**

The following words and terms, when used in this chapter, have the following meanings, unless otherwise defined in Chapter 46 (relating to food code):

*Act*6501—6510). —The Food Employee Certification Act (3 Pa.C.S. §§

*Certificate*—A certificate of completion issued by a certification program that has been evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

*Conference for Food Protection*—An independent, National voluntary nonprofit organization to promote food safety and consumer protection. Participants in this organization include

Federal, State and local regulatory agencies, universities, test providers, certifying organizations, consumer groups, food service and retail store trade associations, and retail food facility operators. The objectives of the organization include identifying and addressing food safety problems and promoting uniformity of regulations in food protection.

*Department*—The Department of Agriculture of the Commonwealth.

*Employee5702* (relating to definitions). —As defined in 3 Pa.C.S. §

**Certification programs. 76.21. §**

(a) *General recognition of certification programs.* For purposes of compliance with the act, the Department recognizes certification programs, including examinations developed under those programs, that are evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

(b) *List of acceptable certification programs.* The Department maintains a current list of Department-recognized certification programs. The Department will:

Publish the current list in the (1) *Pennsylvania Bulletin* annually and when the list is revised.

Post the current list on the Department's web site at [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us). (2)

Provide a copy of the current list upon request directed to the (3) Department's Bureau of Food Safety and Laboratory Services at (717) 787-4315 or the following mailing address:

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

[Pa.B. Doc. No. 12-1514. Filed for public inspection August 10, 2012, 9:00 a.m.]

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