

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 76]

Food Employe Certification

The Department of Agriculture (Department) hereby adopts Chapter 76 (relating to food employe certification).

Authority

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

Need for the Regulations

Section 6505 of the act requires this rulemaking.

In addition, section 6504(c) of the act (relating to organic certification) requires that food establishments come into compliance with the act by July 1, 2001. The rulemaking provides a detailed explanation of these requirements, and sets forth the standards and procedures under which these requirements are to be implemented. The act was the product of an industry-driven initiative to establish minimum food safety training requirements to be met by at least one supervisory employe in most food establishments in this Commonwealth. These requirements are specific to the category of food establishment involved. The promulgation of this rulemaking will allow affected food establishments almost 2 years within which to become familiar with the requirements of the regulations and arrange for the appropriate training and testing of supervisory employes to meet this July 1, 2001, compliance deadline.

In summary, the Department is satisfied there is a need for this rulemaking.

Comments

Notice of proposed rulemaking was published at 27 Pa.B. 2936 (June 21, 1997), and provided for a 30-day public comment period.

Comments were received from Representative Raymond Bunt, Jr., Chairperson of the House Committee for Agriculture and Rural Affairs (House Committee), the Independent Regulatory Review Commission (IRRC), Representative David J. Steil, Representative Matthew N. Wright, the Pennsylvania Food Merchants Association (PFMA), the Erie County Department of Health (ECDH), Health Regulation Compliance, Inc. (HRC), the Pennsylvania Restaurant Association (PRA), the Chester County Health Department (CCHD), the Allegheny County Health Department (ACHD), Radnor Township and Giant Food Stores, Inc. (Giant Foods).

Comment: Representative Steil offered a general comment in support of the proposed rulemaking and urged the Department to move forward expeditiously to promul-

gate the final-form regulations. Representative Wright also offered general support for the regulations.

Response: The Department is moving forward with the referenced final-form regulations.

Comment: The HRC suggested the final-form regulations be entitled "Food Manager Certification" or "Supervisory Employe Certification."

Response: The Department declines to implement this suggestion, to keep the final-form regulations consistent with the title of the act.

Comment: The HRC commented that the mandatory compliance period of July 1, 2001, in proposed § 76.1(a) (relating to compliance) is too far distant, and that compliance should be required sooner than that date. Representative Wright also raised this concern.

Response: The act prescribes this mandatory compliance date (in 3 Pa.C.S. § 6504(c)). Although the Department will encourage voluntary compliance in advance of that date, it cannot change this statutory deadline by regulations.

Comment: Section 76.1(d)(1) of the proposed rulemaking would have exempted food establishments where only commercially prepackaged food is handled and sold from having to comply with the regulations. IRRC, EDH and HRC asked whether this would allow a retail food store that offers only potentially hazardous prepackaged food to its customers to be exempt from the regulations. The HRC suggested the paragraph be revised to exempt food establishments that offer only "prepackaged nonpotentially hazardous foods."

Response: A retail food store that offers only commercially prepackaged food is exempt from the act and these regulations—regardless of whether some portion of the prepackaged food offered by the retail food store is potentially hazardous food. The referenced exemption is prescribed by section 6510(a) of the act (relating to exemptions). For this reason, the Department declines to implement the commentators' suggestion.

Comment: The CCHD offered general objections to the extensive list of terms and definitions in proposed § 76.2 (relating to definitions). The CCHD thought many of the terms were unnecessary, or would be more properly included in a separate State FDA Food Code. The CCHD also offered that many of the terms defined in this section are not defined in the FDA Food Code. The CCHD also offered that the list of defined terms in this section is incomplete.

Response: The Department does not intend § 76.2 of the final-form regulations to present an exhaustive list of every term related to food safety, or to override any provisions of the FDA Food Code. The Department seeks to provide clarification of the many terms it uses throughout the text of the final-form regulations. The definitions originate from the act, the FDA Food Code, technical texts and other food science information sources.

Comment: IRRC recommended deleting the qualifying phrase "unless the context clearly indicates otherwise" from the initial sentence of proposed § 76.2.

Response: The referenced qualifying phrase has been deleted from the final-form regulations.

Comment: IRRC and the PRA commented on the definition of “foodborne disease outbreak” in proposed § 76.2. That term includes “a single case of illness such as one person ill from botulism or chemical poisoning.” The PRA offered the opinion this phrase was not consistent with the 1997 FDA Food Code, and should be deleted. IRRC requested the Department review the 1997 FDA Food Code and make sure the text of this definition is consistent with the Federal definition.

Response: The Department reviewed the recently-released 1999 FDA Food Code and incorporated its definition of “foodborne disease outbreak” into the final-form regulations.

Comment: The PFMA suggested the Department define “majority of a quorum of the advisory board” in § 76.2 of the final-form regulations.

Response: The Department accepts this comment, but has inserted the suggested clarification in § 76.18 (relating to advisory board) of the final-form regulations.

Comment: The ECDH suggested that the definition of “potentially hazardous food” in proposed § 76.2 is incomplete, and should address eggs, cut or peeled fruit or vegetables, and garlic or oil mixtures that are not preserved.

Response: The ECDH is correct in that the FDA Food Code addresses the referenced foods under its definition of “potentially hazardous food.” The Department has not revised its definition of this term in the final-form regulations, though, since the definition is prescribed by section 6502 of the act. The first sentence of § 76.2 resolves any difference between a defined term set forth in that section and a defined term in the FDA Food Code in favor of the FDA Food Code. For this reason, although the act prescribes a particular definition of “potentially hazardous food,” the expanded FDA Food Code definition may be applied.

Comment: The ECDH requested clarification of the definition of a “supervisory employe” in proposed § 76.2. Specifically, the ECDH expressed concern that a person might hire himself out to a number of different food establishments as a “certified supervisory employe” for purposes of the act. The ECDH also asked for clarification of the phrase “designated by the business owner.”

Response: The commentator’s point is well taken. The definition of “supervisory employe” is prescribed by section 6502 of the act. However, the act also clarifies in section 6503(d) of the act (relating to certification advisory board and programs) that the certified supervisory employe must be “. . . responsible for the storage, preparation, display or serving of foods to the public . . .”, and must also have “supervisory authority” in section 6504(a) of the act. The Department has added this statutory clarification to the definition.

The Department believes the phrase “designated by the business owner” is self-explanatory.

Comment: IRRC recommended the definition of “temperature danger zone” in proposed § 76.2 be revised to reflect temperatures in both degrees Celsius and degrees Fahrenheit. Radnor Township asked whether the temperatures set forth in the proposed rulemaking would be revised in the final-form regulations to conform to the FDA Food Code.

Response: The Department has revised the definition of this term in the final-form regulations by deleting references to specific temperatures. This revision was prompted by both the comments and the Department’s

expectation that the FDA Food Code will ultimately prescribe temperatures different from those originally proposed by the Department.

Comment: The CCHD suggested proposed § 76.3(a)(2) (relating to requirements for food establishments) be revised to reflect the industry-specific category of food establishment described in that paragraph be a food service that prepares or serves, or both, potentially hazardous foods to the consumer.

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

Comment: The CCHD and ACHD expressed concern over the industry-specific categories of food establishments in proposed § 76.3(a)(1)–(5). The ACHD raised questions as to the relevance of having different industry-specific categories, and made the point that a person with a good grasp of the causes of foodborne illness should be able to apply that knowledge in more than one segment of the food industry without having to take a separate training course. The CCHD also questioned the relevance of these separate categories, and asked which certification programs and hours would be acceptable for each of these industry-specific categories.

Response: Section 6503(d) of the act requires the completion of “industry-specific training programs” by supervisory employes seeking certification under that statute. This language leaves the Department to define—by regulation—the appropriate industry-specific categories. The ACHD is correct in that the basic science of food safety and procedures for the prevention of foodborne illness apply from one industry-specific category of food establishment to the next. The act requires the Department fine-tune this training to the extent possible, though. The Department believes the categories listed in § 76.3(a)(1)–(5) of the final-form regulations are reasonable. The Department will remain receptive to suggested revisions as it implements this regulation. If experience proves another set of categories would be more workable, the Department will revise this regulation to adopt these categories.

In response to the CCHD’s question, the final-form regulations do not identify the specific certification training programs that are appropriate for each industry-specific category of food establishment. The final-form regulations allow persons to apply for and obtain approval of certification training programs. It is quite likely that the Department will approve some certification training programs as adequate for most—if not all—of the industry-specific categories of food establishments. In other words, it is possible a single certification training program may be approved by the Department as adequate for all five industry-specific categories of food establishments. In response to the CCHD’s comment, § 76.5(d)(3) (relating to certification training programs: obtaining the Department’s approval) of the final-form regulations has been revised to reflect that an application for certification training program approval may seek approval under more than one of the industry-specific categories of food establishments.

Comment: The CCHD offered the suggestion that a new industry-specific category of food establishment—for mobile or temporary, or both, food facilities—be added in § 76.3(a). The CCHD feels these operations often “pose considerable public health-communicable disease concerns.”

Response: The Department declines to implement this suggestion in the final-form regulations. A mobile or

temporary food facility would fit within one of the five industry-specific categories in § 76.3(a) of the final-form regulations. If subsequent experience shows there would be some advantage to creating the suggested category, the Department will revisit this regulation.

Comment: IRRC and Radnor Township noted that a single food establishment might fall into more than one of the industry-specific categories in § 76.3(a), and that § 76.3(b) requires a food establishment to have at least one certified supervisory employe who is certified with respect to the industry-specific category of the food establishment. The logical question: If a grocery store also contains a bakery that produces potentially hazardous food and has a counter where food is prepared and served, would it be necessary for the grocery store to have a supervisory employe, or supervisory employes, with certifications in each of the industry-specific categories applicable to the store? IRRC stated "the Department needs to clarify the requirements for food establishments that could qualify under more than one industry-specific category."

Response: The answer to the question posed is "yes." If a single store falls within multiple industry-specific categories, it shall have a certified supervisory employe who is certified with respect to each of those industry-specific categories. This requirement is not expected to be unduly burdensome or onerous, though, in light of the fact that a single certification training program may be approved as acceptable training for certification in more than one industry-specific category of food establishment.

In response to the comment, § 76.3(b) of the final-form regulations has been revised to clarify the issues raised by the commentators.

Comment: The PFMA suggested proposed § 76.3(b) be revised to clarify that a certified supervisory employe be responsible for implementing company policies, procedures and standards for the prevention of foodborne illness.

Response: Although the Department has not implemented the exact suggestion offered by the commentator, it has revised the definition of "supervisory employe" in § 76.2 of the final-form regulations to incorporate references to the "supervisory authority" of an employe and the general responsibilities of an employe in sections 6504(a) and 6503(d) of the act, respectively.

Comment: The CCHD offered the opinion that the phrase "or designate" in proposed § 76.3(b) would create a "loophole" by which a person who is not an employe or on full-time status could be a food establishment's "certified supervisory employe."

Response: Section 76.3(b) of the final-form regulations includes the phrase "or designate" because that phrase is contained in the definition of "supervisory employe" in section 6502 of the act.

Comment: Radnor Township asked whether a certified supervisory employe, as described in proposed § 76.3(b), would have to be present at a food establishment for every shift of that food establishment.

Response: A food establishment's certified supervisory employe need not be present at a food establishment for every shift.

Comment: IRRC suggested proposed § 76.3(c) and (d) be revised by replacing the phrase "shall bring itself into compliance" with "shall comply."

Response: The Department accepts this suggestion, and has implemented it in the final-form regulations.

Comment: IRRC noted that proposed § 76.3(c) would require a new food establishment to comply with the act within 90 days, while proposed § 76.3(d) would require an existing food establishment that loses its certified supervisory employe (through employe turnover or other circumstances) to comply with the act within 3 months of the loss. IRRC suggested the Department use one term consistently—either 3 months or 90 days. The ACHD offered a similar comment.

Response: The 3-month period referenced in § 76.3(d) is prescribed by section 6504(d) of the act. The 90 day period referenced in § 76.3(c) derives from the provision in section 6503(d) of the act, which affords a supervisory employe that period from his date of employment within which to pass the required certification test. The Department believes it reasonable to use this same 90-day time period in calculating the time within which a new food establishment shall bring itself into compliance. For this reason, the Department declines to implement the suggested revision in the final-form regulations.

Comment: IRRC recommended proposed § 76.3(e) be rewritten for greater clarity, and offered recommended language in this regard.

Response: The Department agrees that IRRC's recommended language is more clear and straightforward than that of proposed § 76.3(e), and has revised § 76.3(e) of the final-form regulations to adopt IRRC's suggested language.

Comment: Proposed § 76.3(e)(2) and (6) would require a food establishment to retain certain records for 1 year. IRRC offered the observation that this 1-year record retention period was not necessary, and recommended the Department consider establishing a shorter record retention period in the final-form regulations.

Response: The Department accepts this recommendation, and has revised § 76.3 of the final-form regulation to establish a 4-month record retention period.

Comment: Giant Foods and the PFMA noted that proposed § 76.3(e) requires specific records be maintained at the food establishment site, and suggested the final-form regulation be revised to afford food establishments the option to retain these records at the food establishment's corporate office. The PFMA also suggested that this revision would make recordkeeping and retrieval easier for both food establishments and the Department.

Response: The Department declines to implement this recommendation. A Department employe who conducts an inspection of a food establishment should be able to determine with certainty, during the course of that inspection, whether the food establishment is in compliance with the act and its attendant regulations. This would not be possible if necessary paperwork is retained at some distant corporate office and is not immediately available at the time of inspection. The Department believes that the recordkeeping requirements in § 76.3(e) are not unduly burdensome, and represent the minimum information the Department needs to check compliance with the act and its attendant regulations.

Comment: Proposed § 76.3(f) requires that records be available during "reasonable hours." IRRC suggests changing the phrase to "normal business hours of the food establishment." IRRC believes that this phrase will clarify when records are expected to be made available.

Response: The Department accepts this recommendation, and has implemented it in the final-form regulations.

Comment: Giant Foods and the PFMA offered the comment that proposed § 76.3(g)—which requires posting of the original certificate of a food establishment's certified supervisory employe in public view in the food establishment—should be revised to specify the exact location where the certificate should be posted. PFMA suggested this location be “in the entranceway, in the customer service area or at the cash register for establishments having no customer area.”

Response: The Department is reluctant to implement this suggestion, given the variety of layouts of food establishments. The Department believes the general requirement the certificate be posted “in public view” is adequate. A food establishment meets this posting requirement as long as the certificate is visible and readable from some location in the establishment that is accessible to the public.

The Department revised § 76.3(h) to reflect that a food establishment should return a certificate to the person to whom it is issued upon termination of employment or when the employe is no longer a certified supervisory employe with respect to that food establishment.

Comment: Proposed § 76.4 (relating to eligibility to apply for certification) would require a person to have received a score of at least 70% on an approved certification examination to be eligible to apply to the Department for certification. Several commentators questioned this 70% standard, and recommended alternative approaches to determining eligibility. The PRA suggested the final-form regulation recognize examinations developed to various National standards. CCHD took the position that any specified passing score is too restrictive. It noted that some courses only give pass/fail results. The CCHD also recommended the final-form regulation reflect that any examination shall meet “current psychometric standards.” IIRC considered these comments, reviewed the proposed 70% standard and the requirement that an examination consist of at least 80 questions (prescribed in § 76.8 (relating to format of a certification examination)), and recommended the Department consider whether these standards and requirements might exclude some courses that would otherwise qualify. ACHD indicated that there is a current food safety training course which administers a test that has only 60 questions.

Response: The Department firmly believes that a supervisory employe should demonstrate a mastery of the subject matter of an approved certification examination in order to be eligible for certification, and that the 70% standard is a reasonable demonstrator of the test-taker's mastery of that subject matter. The public has a basic understanding that a person who scores less than 70% on an examination has not mastered the subject matter addressed in that test. The Department did not set out to establish lowest-common-denominator standards that could be met by every food safety program. If the Department's 70% standard—or any other requisite for the Department's approval of a certification training program—works to exclude some food safety courses from being approved, the Department views this as acceptable.

One of the most widely-used food safety training programs is the “ServSafe” program developed by the Education Foundation of the National Restaurant Association. Under that program, the minimum passing score is 75% and the certification examination consists of at least 80 multiple-choice questions.

If there is a food safety course that awards its students a pass/fail grade, this would not, per se, prevent the

Department from approving the course. If the pass/fail determination is based upon a test which meets the criteria of the final-form regulation and the test scores can be conveyed to the Department, the course may be approved. If a person “passes” the course with an examination score of less than 70%, though, the Department would not certify that person.

The Department does not consider the 80-question minimum requirement for an approved certification examination to be unreasonable, particularly in light of the volume of required subjects set forth in § 76.7 (relating to certification training programs: food safety protection and training standards) of the final-form regulations.

Comment: The CCDH expressed concern that proposed § 76.4 requires any person seeking certification from the Department to first complete an approved certification program. The CCDH would prefer there be some mechanism by which persons experienced in food safety procedures could be grandfathered-in for certification, rather than requiring these persons to attend a course of instruction in an area with respect to which they are already familiar. The CCDH recommended there be a challenge test (a test without the pretest training) or some other approach that would spare food safety experts the time and expense of attending certification training programs.

Response: The Department declines to implement this recommendation. Section 6503(d) of the act requires certification be granted “following the completion of industry-specific training programs recommended by the advisory board and approved by the department.” In addition, the training and continuing education requirements set forth in the final-form regulations will help keep a certified supervisory employe's food safety knowledge current. The Department also notes that the act and the final-form regulations afford a person until July 1, 2001, within which to obtain the required training and certification.

Comment: IIRC noted that proposed § 76.5 (relating to certification training programs: obtaining the Department's approval) would provide guidelines for approval of certification training programs, but would not prescribe minimum hours of instruction. IIRC suggested that a minimum hour requirement is a core element of a certification training program, and recommended the Department prescribe the specific minimum hours of instruction that will be required. Similarly, the PFMA and CCHD requested the Department revise § 76.7 of the final-form regulations to specify the total number of training hours necessary for a program to become an approved certification training program.

Response: The Department agrees with IIRC and all the other commentators in this regard, and has revised § 76.7 of the final-form regulations to prescribe a minimum of 15 hours of instruction in an approved certification training program. This 15-hour minimum instruction requirement is further explained in § 76.7(a)(1)–(7) of the final-form regulations, which divides this 15-hour period among seven basic course topics.

Comment: The ACHD suggested that proposed § 76.5(a) is too strict if it would require the Department's approval of any changes to previously-approved certification training programs.

Response: The Department agrees with the commentator, and has revised § 76.5(a) in the final-form regula-

tions to reflect that it is not necessary for the Department to approve nonsubstantive changes to a previously-approved certification training program. As a means of monitoring whether the program changes are, in fact, nonsubstantive, the Department has also added language to require these changes be reported to the Department.

Comment: The PRA, ACHD and ECHD asked whether a single certification training program could be approved with respect to all 5 of the industry-specific categories of food establishment in § 76.3(a)(1)—(5) of the final-form regulations. As an example, the PRA referenced its “ServSafe” certification training program and noted it had been approved in other states as acceptable training for food service employes in “restaurants, congregate feeding sites, contract feeders, institutional feeding, grocery stores, convenience stores, etc. . .”

Response: The answer to this question is “yes.” A certification training program’s content might be adequate to address any combination of the five industry-specific categories of food establishment. In response to this comment, the Department has revised § 76.5(b) of the final-form regulations to reflect the possibility that a single approved certification training program might cover multiple industry-specific categories of food establishments.

Comment: The ECHD expressed concern that proposed § 76.5 does not prescribe any minimum training, experience or educational requirements for those persons who will teach approved certification training programs. CCHD took the opposite view, and stated that it was not necessary, in proposed § 76.5(d), to describe the contents of a complete application.

Response: The Department is satisfied that the information and materials required under the application process described in § 76.5(d)(1)—(9) of the final-form regulations will provide the Department and the Food Employee Certification Advisory Board (Advisory Board) adequate information as to whether a certification training program should be approved. For this reason, the Department has not made any revision to the final-form regulations in response to these comments.

Comment: Proposed § 76.5(d)(4) would require an application for certification training program approval to contain a copy of any examination to be administered as part of the program, plus the answer key. IRRC and the PRA expressed apprehension that this proprietary product might be distributed beyond the Department or the Advisory Board. IRRC also expressed apprehension that examinations might find their way to prospective examinees.

Response: The Department will consider exams and answer keys submitted to it under § 76.5(d)(4) of the final-form regulations confidential and the proprietary documents of the entity submitting them, and will make no further distribution beyond the Department and the Advisory Board. Advisory Board members will also be apprised that these documents are to be considered proprietary information. In response to the comment, the Department has revised § 76.5(g) of the final-form regulations to clarify that certain materials it receives in the application process will be considered confidential and proprietary. The Department has also made a similar revision to § 76.13(d) (relating to obtaining departmental approval of a continuing education course) of the final-form regulations.

Comment: This comment is similar to the preceding comment. Proposed § 76.5(d)(5) would require an applica-

tion for certification training program approval to include a copy of all teacher materials for the program. Giant Foods expressed concern over this provision, and suggested the final-form regulation be revised to afford an applicant the option to submit a listing of teacher materials instead of the materials, themselves.

Response: The Department believes it is important to review the teacher materials for any certification program with respect to which approval is sought, and declines to implement the suggested revision in the final-form regulations. To the extent the commentator’s concerns may be driven by a desire to protect proprietary information or otherwise keep their work product from being used by other entities, the Department will consider teacher materials confidential and the proprietary information of the entity submitting them, and will make no further distribution beyond the Department and the Advisory Board. Advisory Board members will also be apprised that teacher materials are to be considered proprietary information. As stated in the preceding response, the Department has revised §§ 76.5(g) and 76.13(d) of the final-form regulations to clarify that certain materials it receives in the application process will be considered confidential and proprietary.

Comment: The ECDH asked if—in the context of reviewing an application for approval of a home study certification training program—the materials the applicant would be required to submit under proposed § 76.5(d)(6) would be the course materials the home study course proposes to forward to its students.

Response: The answer to this question is “yes.”

Comment: The ECDH reviewed proposed § 76.5(f) and asked whether an approved certification training program must be reapproved at least 90 days before it is conducted. ECDH also suggested requiring course re-approval only if changes are made to the curriculum.

Response: Once a certification program is approved, it need not be reapproved each time it is offered. For example, if a certification program is approved in 1999 and is offered to students in 1999, it need not be reapproved if it is offered again in 2000. The 90-day deadline in § 76.5(f) of the final-form regulations provides the Department and the Advisory Board a reasonable period following receipt of a complete application within which to evaluate the application and communicate a decision on the application to the applicant, and affords the applicant a reasonable prospect that—barring complications with the application—the program could be approved in advance of the planned date on which the applicant wishes to conduct the program for the first time.

Comment: Giant Foods suggested the 90-day deadline in proposed § 76.5(f) be reduced to 45 days.

Response: The Department declines to implement the suggested revision in the final-form regulations. The Department believes the 90-day period in § 76.5(f) of the final-form regulations is necessary, to afford adequate time to schedule and convene a meeting of the Advisory Board to consider the application. This deadline also serves to decrease the number of times the Advisory Board shall meet each year.

Comment: Giant Foods requested the Department define the phrase “a majority of the Advisory Board” in proposed § 76.5(g).

Response: The Department has added language to § 76.18(d) (relating to Advisory Board) of the final-form

regulations to reflect that a quorum of that body is a simple majority of its members, and a simple majority of a quorum is necessary for approval of any motion before that body.

Comment: The ACDH suggested that the audit permitted under § 76.6 (relating to certification training programs: audit by Department) should also address "control of the tests, proctoring, cheating, teaching to the test, etc. . ."

Response: The Department believes that the broad language of § 76.6 of the final-form regulations provides the Department adequate authority to monitor approved certification training programs. The Department is reluctant to attempt to list all of the factors it might consider in the course of its audit of such a program, since it would be difficult to make such a listing all-inclusive.

Comment: The House Committee reviewed proposed § 76.7 and noted that the section did not make reference to the "industry-specific training programs" prescribed by section 6503(d) of the act. The House Committee noted appropriate references to industry-specific categories of food establishments throughout the proposed regulation, and questioned the absence of this subject in proposed § 76.7—the section prescribing appropriate food safety protection and training standards.

Response: The Department agrees that § 76.7 of the final-form regulations should contain language requiring a more precise link between the subject matter of a certification program and the industry-specific category of food establishment with respect to which certification program approval is sought. In response to this comment, § 76.7 of the final-form regulations has been revised to make repeated references to the requirement that instruction in a training program be relevant to the industry-specific category of food establishment addressed in the certification training program.

Comment: The House Committee took note of the use of the term "training program" in proposed § 76.7(a), and asked whether it is the same thing as a "certification program" and whether the term "certification training program" would be more accurate.

Response: The Department agrees that the term "certification training program" is the most descriptive term for the programs described in the final-form regulations, and has revised the final-form regulations throughout to make consistent use of this term.

Comment: The CCHD offered the general comment that the material in proposed § 76.7(b)—(h) was too detailed, and would not allow for new food safety information to be added to certification training programs.

Response: The referenced sections do not prevent future certification training programs from addressing advancements in food safety science and procedures.

Comment: The HRC suggested proposed § 76.7 require a certification training program to address Hepatitis A vaccine, the availability of this vaccine and the availability of other vaccinations that relate to foodborne disease as they become available.

Response: Section 76.7(d)(1)(iii) of the final-form regulations requires that a certification training program address "Hepatitis A infection." If experience demonstrates more emphasis should be placed on the topics described by the commentator, the Department will revisit the regulation.

Comment: IRRC suggested the Department delete the phrase "or hazardous analysis critical control point" from

§ 76.7(e)(1)(v) of the final-form regulations, since "HACCP" is defined in § 76.2.

Response: IRRC's suggestion has been implemented in the final-form regulations.

Comment: IRRC noted the use of the acronym "MSDS" in proposed § 76.7(f)(2), and suggested the acronym be spelled-out and defined in § 76.2 of the final-form regulations.

Response: IRRC's suggestion has been implemented in the final-form regulations.

Comment: Proposed § 76.7(g)(6) and (7) would require that a portion of training address facilities and equipment layout and, in particular, plumbing and management of solid and liquid waste. The ECHD asked whether these paragraphs cover the information that should be given regarding sewage disposal.

Response: The Department believes the phrase "plumbing design" and "management of solid and liquid waste" in § 76.7(g)(6) and (7) of the final-form regulations fairly include sewage disposal.

Comment: The ACHD notes that all of the food certification program training areas should be in compliance with the recommendations set forth at the 1996 Food Protection Conference.

Response: The Department's main reference in developing the final-form regulations has been the recently-issued 1999 FDA Food Code, rather than the 1996 Food Protection Conference.

Comment: Proposed § 76.8 (relating to format of a certification examination) would restrict food certification examinations to multiple choice or true or false formats. Both IRRC and the PRA offered the opinion that there is no need to restrict the test format because there are other testing formats available. The ACHD also questioned the Department's acceptance of true-or-false questions, since someone with no food safety knowledge could answer half of these questions correctly.

Response: The Department agrees with the commentators and has revised § 76.8 of the final-form regulations to delete any requirement the examination be in a multiple choice or true-or-false format. The Department will not prohibit the use of true-or-false questions, but understands that the typical examination uses a multiple-choice format. If subsequent experience demonstrates a need to prohibit true-or-false examinations altogether, the Department will revisit this regulation.

Comment: IRRC recommended the Department revise § 76.9 of the final-form regulations (relating to reporting results of certification examination) to specify whether the 20-day time period referenced in that section pertains to "business days" or "calendar days." The PRA recommended that this period refer to "business days." The HRC recommended this period be lengthened to 45 days.

Response: The Department has revised this section to clarify that the referenced period refers to calendar days. This will be an easier standard to enforce. In recognition of the concern raised by the PRA and HRC, though, the 20-day period has been changed to a 30-calendar-day period in the final-form regulations.

Comment: Radnor Township asked who would be responsible to grade certification examinations (which are referenced in proposed § 76.9).

Response: The person who reports the examination score to the Department under § 76.9 of the final-form regulations is ultimately responsible for the accuracy of

the scoring of the examination, and is free to delegate examination scoring responsibilities.

Comment: Proposed § 76.10 (relating to applying for certification) would require a person to apply to the Department for certification. Both the PFMA and Giant Foods suggested requiring either that a person or a corporate representative of that individual apply to the Department for certification. Giant and the PFMA believe that a corporate office may be able to process a supervisory employee's application for certification more quickly than the supervisory employee.

Response: The Department believes the language of § 76.10 of the final-form regulations would allow the process the commentators describe. If, for example, Giant Foods arranges for a supervisory employee to attend and complete a certification training program, it may obtain and submit a certification application on its employee's behalf. If certification is granted, though, the certificate will be issued to the certified supervisory employee, rather than Giant Foods.

Comment: In the context of its review of proposed § 76.10, the CCHD requested clarification of whether a person who conducts a certification training program or proctors a certification examination could distribute applications for certification forms to persons taking the training. Similarly, Giant Foods asked whether a corporation could obtain application forms for its supervisory employees.

Response: The Department will provide application forms to any person who requests them—regardless of whether they are requested by a prospective applicant, a prospective applicant's employer, the person conducting the certification training program attended by the prospective applicant, or any other person. Section 76.10(b) of the final-form regulations has been revised to clarify that anyone may obtain a certification application form from the Department. An instructor or examination proctor is free to obtain and distribute these forms.

Comment: The ECHD reviewed proposed § 76.10(b)(2), which requires an applicant for certification to submit the date and location of the approved certification training program as part of the application, and questioned whether this information would be adequate to constitute "official proof" that the applicant had completed required training.

Response: The Department will verify whether an applicant has successfully completed required training by referring to the confirmation required of the person who proctors the certification examination. Section 76.9 of the final-form regulations requires the proctor to provide the Department a copy of the examination score, the date and location of the examination and the industry-specific category of food establishment addressed in the certification training course. The Department will use this information to cross-check the representations a person makes on an application for certification.

Comment: IRRC and the PFMA suggested proposed § 76.11 (relating to certificate) be revised to allow for the replacement of lost, stolen or damaged certificates.

Response: The Department accepts this comment, and has added § 76.11(d) to the final-form regulations to establish a procedure for replacing lost, stolen or damaged certificates.

Comment: The HRC commented that the certificate described in proposed § 76.11 should be valid for the industry-wide average of 2 years rather than 5 years.

Response: The 5-year effective life of a certificate, as set forth in § 76.11(a)(4) of the final-form regulations, is prescribed by section 6504(f) of the act, and cannot be altered by regulation.

Comment: The ACHD and ECHD reviewed proposed § 76.12 (relating to renewal of certification) and suggested that the final-form regulations require that a certificateholder take a written examination every 5 years to ensure that continuing education efforts have been successful.

Response: Although the Department agrees that periodic retesting of certificateholders might work to benefit the long-term credibility and effectiveness of food safety promotion efforts, it is constrained to follow the provisions of the act which provide in section 6504(f) of the act, that although continuing education courses are required, the courses may not include a written examination.

Comment: Giant Foods requested the 7.5-hour course requirement for continuing education courses, in proposed § 76.12(a), be reduced to 4 hours.

Response: The Department believes the 7.5 hour minimum requirement in § 76.12(a) of the final-form regulations is a reasonable minimum standard for a continuing education course, and for this reason declines to implement the requested revision.

Comment: Giant Foods and the PFMA requested that proposed § 76.12(a)—(c) be revised to allow a corporate representative to renew a certified supervisory employee's certification.

Response: As is the case with initial applications for certification (§ 76.10), the Department will provide application for renewal of certification forms to any person who requests them regardless of whether they are requested by a prospective applicant, a prospective applicant's employer, or any other person. Section 76.12(b) of the final-form regulations has been revised to clarify that anyone may obtain an application for renewal of certification form from the Department. This revision is similar to a revision appearing in § 76.10(b) of the final-form regulations.

Comment: The CCHD noted that proposed § 76.13(c)(2) (relating to obtaining Departmental approval of a continuing education course) would require a course to address changes, updates or advances in food safety. The commentator makes the point that after 5 years from initial certification a certificateholder would benefit from a general review of the material that was presented in the initial certification training course.

Response: The Commentator's point is well taken. The Department has revised § 76.13(c)(2) of the final-form regulations to allow a continuing education course to consist of a general review of food safety considerations and procedures.

Comment: The CCHD offered the observation that proposed § 76.13 would not prescribe curriculum guidelines for continuing education courses, and requested the Department consider adding the curriculum guidelines in the final-form regulations.

Response: The Department is satisfied with the general continuing education course subject matter parameters in § 76.13(c) of the final-form regulations, and intends to allow a measure of flexibility and innovation within these parameters. If subsequent experience reveals a need to establish more specific requirements, the Department will revisit this regulation.

Comment: The PRA presented a factual situation which drives its suggestion that proposed § 76.14 (relating to reciprocity with other states) be revised. Under that section, the Department would accept certification issued by another state if the other state has a similar food employe certification program and that state and the Department have a reciprocal agreement in this regard.

The PRA presented the following scenario: A restaurant chain has multiple units in many states, and trains its managers at a central training facility outside this Commonwealth using the "ServSafe" training program of the Educational Foundation of the National Restaurant Association. If the state at which the training facility is located does not, itself, have both a food employe certification program and a reciprocity agreement with the Department, the proposed language of § 76.14 would prohibit those managers from going to work in this Commonwealth and having their certification be accepted in this Commonwealth because the residual training state did not require certification.

Response: The basic requirements of § 76.14 of the final-form regulations are prescribed by section 6506 of the act.

In addition, the Department believes the commentator might be confusing reciprocity with eligibility to apply for certification in this Commonwealth. Under the factual situation the commentator relates, a manager who successfully completes the "ServSafe" program out-of-State is free to apply for certification in this Commonwealth, as long as the "ServSafe" program is an approved certification training program. The fact that the state in which the training occurs does not have reciprocity with the Commonwealth under § 76.14 of the final-form regulations does not limit or prohibit a person who has successfully completed an approved certification training program in another state from applying for certification under the act. The Department has not implemented the commentator's suggested revision.

Comment: The CCHD offered the general comment that proposed § 76.14 should be combined with proposed § 76.17 (relating to preemption and local governmental authority).

Response: The Department declines to combine these two sections. The act treats the subject matter of these two sections separately, as well. Preemption is addressed in section 6503(c) of the act. Reciprocity is addressed in section 6506 of the act.

Comment: IRRC and the PRA suggested proposed § 76.15 (relating to suspension or revocation of certification) be revised to address the procedure by which revoked or suspended certificates would be reinstated.

Response: The Department accepts this suggestion, and has implemented it by adding § 76.15(d) to the final-form regulations. That new subsection provides for automatic reinstatement of a suspended certificate if the suspension period ends before the expiration date printed on the certificate. If the expiration date for the certificate occurs during the period of suspension, though, the affected person shall reapply for certification after the suspension period. If a certificate is revoked, the revoked certificate will not be reinstated and the affected person shall reapply for certification at the end of the revocation period.

Comment: Giant Foods noted that proposed § 76.15(a) would provide that "the Department may suspend or revoke the certification of a certificateholder if that person does one or more of the following . . .", and sug-

gested this provision be revised to only allow revocation or suspension when a certificateholder repeatedly performs one or more of the violations described in proposed §§ 76.15(a)(1)–(4).

Response: The Department declines to implement this suggestion in the final-form regulations. As written, § 76.15 affords the Department a measure of discretion in deciding whether to suspend or revoke certification. The provision reads that the Department may suspend or revoke certification under some circumstances. The Department believes there are food safety violations that might justify suspension or revocation of a certificate the first time they occur, and believes it must preserve the option to take action against a certificateholder when such a violation occurs.

Comment: The House Committee suggested that proposed § 76.17 be reworded to explain more fully the complimentary relationship between State and local authorities, and characterized this relationship as essential to the success of food employe certification efforts State-wide.

Response: The Department believes § 76.17 of the final-form regulations addresses the full extent of the interplay between the Department and local food employe certification programs that predate September 1, 1994. These local food employe certification programs are free to operate within the boundaries of their respective local government units. A local government unit with its own pre-September 1, 1994 food employe certification program may make reciprocal agreements with other local government units. If a local government unit with its own pre-September 1, 1994 food employe certification program wants its certified food employes to be accepted Commonwealthwide, though, that program's training certification program would have to be approved by the Department and the Advisory Board in accordance with the act and the regulations.

Comment: The ACHD expressed the opinion that a food certification program offered by local health units should be accepted Statewide if the course is comparable to those approved by the Department and the Advisory Board in accordance with the act. The commentator also recommended proposed § 76.17 be revised to allow for reciprocal agreements between local health units and the Department.

Response: The Department declines to implement this recommendation. Section 6503(e) and (f) of the act carves out a rather narrow exemption for certain local food employe certification programs established prior to September 1, 1994. The Department believes that the local food employe certification training program standards of an exempt county, city, borough, incorporated town or township should not be accepted outside that local government unit unless the local government unit applies to the Department and receives approval of its certification training program in accordance with the act and the regulations. If this occurs, a person who successfully completes the Department-approved certification training program (and meets the other requirements of the act and the regulations) can apply to the Department for a certificate.

Comment: The CCHD commented that proposed § 76.17(d) was confusing and repetitive, and should be deleted.

Response: The Department disagrees, and has retained the referenced provision in the final-form regulation. The

referenced subsection attempts to clarify the responsibilities of local government units that retain exclusive responsibility for food employe certification within their jurisdictions.

Comment: The CCHD reviewed proposed § 76.18 (relating to Advisory Board) and suggested that the composition of the Advisory Board establishes an imbalance between industry-political interests and public health interests in favor of the former. The ECHD and Radnor Township offered similar comments. The HRC proposed adding at least seven positions to the Advisory Board: three persons with adult education/food manager training, two persons with medical backgrounds and two persons with public health backgrounds. Representative Wright proposed that at least six Advisory Board members have medical backgrounds and that at one of these six should be associated with Pennsylvania State University.

Response: Section 76.18 of the final-form regulations restates the Advisory Board composition prescribed in section 6503 of the act. The Department notes, though, that the referenced section of the act allows for at least one person from the large list of food service, governmental and public health organizations in section 6503(a)(5) of the act to be members of the Advisory Board. Section 76.18(b)(8) of the final-form regulations restates this, and allows for at least one representative from each of the groups listed in § 76.18(b)(8)(i)—(xiii). The Department will consider all of the comments received on this subject as it assembles the Advisory Board. If the Department perceives a need to have more than one Advisory Board members from any of these designated interests, it may do so.

Comment: IRRC and the CCHD noted that the proposed rulemaking does not impart any authority or obligation upon a certified supervisory employe to implement food safety measures or otherwise implement his food safety training in the food establishment at which the certified supervisory employe is employed. IRRC expressed concern that the certified supervisory employe will not be effective in protecting the public health if the employe is powerless to implement food safety measures, and recommended the Department clarify the extent of the certified supervisory employe's responsibilities and authority. The House Committee offered a similar comment, and asked for clarification of the extent to which the regulation requires certified supervisory employes to implement their food safety training in the workplace. The House Committee raised its question in the context of its consideration of proposed § 76.19 (relating to civil penalties).

The House Committee also noted that proposed § 76.19 would allow for the imposition of a civil penalty upon any "person or food establishment" that violates the act or a regulation, and asked for clarification of the circumstances under which a civil penalty might be imposed.

Response: Although the act requires most food establishments in this Commonwealth to have at least one certified supervisory employe by July 1, 2001, it does not require that these certified supervisory employes make any specific use of their food safety training in the workplace. Food establishments are regularly inspected by the Department or local authorities, or both, and can be prosecuted for food safety and sanitation violations. In addition, sanitation problems can cost a food establishment business. A food establishment with a certified supervisory employe, trained in food safety and sanitation in accordance with the act, has a built-in interest in

availing itself of the food safety and sanitation knowledge of that certified supervisory employe. Against this backdrop, the Department declines to revise the final-form regulation to impart upon certified supervisory employes duties or responsibilities that are not prescribed by the act.

Section 76.19 of the final-form regulations allows for the imposition of civil penalties, but this remedy is in addition to any other remedy available at law, in accordance with section 6508 of the act. As stated, the Department inspects food establishments and has statutory authority under which to prosecute persons for violations of food safety and sanitation standards. The Department does not expect civil penalty provisions to be a frequent occurrence, since the Department can, in most cases, proceed with a criminal prosecution at less cost. It is likely a civil penalty would be more commonly sought with respect to technical violations of the procedures or requirements of the regulations, rather than violations that more directly affect public health and safety.

Comment: IRRC offered the general recommendation that the Department revise the final-form regulations by deleting the phrase "other information the Department might reasonably require," as it appears in proposed §§ 76.5(d)(9), 76.11(a)(7), 76.12(b)(5) and 76.13(c)(6). In each instance, the phrase is used to afford the Department some discretion to require additional information necessary to a decision.

Response: Although the Department declines to implement this recommendation, it has revised the referenced paragraphs in the final-form regulations to fine-tune the purpose for which additional information might be required. The Department has made similar revisions in the most recent regulations it promulgated in Title 70—the regulations required under the Consolidated Weights and Measures Act 3 Pa.C.S. §§ 4101—4149 (relating to Consolidated Weights and Measures Act). The Department believes it important to retain a measure of flexibility and discretion, but agrees that the other information language should be narrowed as it has been in the final-form regulations.

Fiscal Impact

Commonwealth

The final-form regulations will not impose any costs on the Commonwealth or have any fiscal impact upon the Commonwealth beyond those costs and fiscal impacts imposed by the act itself. The act requires the Department devote employe time to the review of proposed training programs, the keeping of required records and other functions. Although the Department will inspect food establishments for compliance, employes of the Department are already charged with the responsibility to inspect and license food establishments. The addition of the inspection responsibilities imposed by the act will not appreciably increase the Department's costs.

Political Subdivisions

The final-form regulations will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The final-form regulations will not impose costs or other adverse fiscal consequences beyond those imposed by the act itself. In accordance with the act, most food establishments in this Commonwealth will have to ensure that they employ at least one certified supervisory employe. Although the food establishment might impose the cost of necessary training on the supervisory employe, it is more likely the food establishment, itself, would absorb these costs.

General Public

The final-form regulations will impose no costs and have no fiscal impact upon the general public. Although food establishments might incur some costs in obtaining certification for a supervisory employe, these costs are expected to be modest. In view of this expectation, and the fact that certification is valid for 5 years at a time, it is not likely any costs imposed by the act will measurably impact upon consumers.

Paperwork Requirements

The act requires that the Department issue certificates to supervisory employes who successfully complete an approved certification training program and pass an approved examination. It also requires the Department to monitor compliance and enforce its provisions. This will certainly result in an increase in paperwork. The final-form regulations, though, do not impose paperwork requirements beyond those imposed by the act itself.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 11, 1997, the Department submitted a copy of the notice of proposed rulemaking published at 27 Pa.B. 2936 to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with section 5(b.1), the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House and Senate Committees on August 21, 1999, and were approved by IRRC on September 9, 1999.

Findings

The Department finds the following:

(1) Public notice of its intention to adopt the regulation encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240)(45 P. S. §§ 1201 and 1202) and their attendant regulations, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed rulemaking published at 27 Pa.B. 2936.

(4) The adoption of the regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

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

(1) The regulations of the Department, 7 Pa. Code Chapter 76, are amended by adding §§ 76.1—76.19 to read as set forth in Annex A.

(2) The Secretary of Agriculture shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(3) The Secretary of Agriculture shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5033 (September 25, 1999).)

Fiscal Note: Fiscal Note 2-107 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 7. AGRICULTURE****PART III. BUREAU OF FOOD SAFETY AND LABORATORY SERVICES****CHAPTER 76. FOOD EMPLOYE CERTIFICATION**

Sec.	
76.1.	Compliance.
76.2.	Definitions.
76.3.	Requirements for food establishments.
76.4.	Eligibility to apply for certification.
76.5.	Certification training programs: Obtaining the Department's approval.
76.6.	Certification training programs: Audit by Department.
76.7.	Certification training programs: Food safety protection and training standards.
76.8.	Format of a certification examination.
76.9.	Reporting results of a certification examination.
76.10.	Applying for certification.
76.11.	Certificate.
76.12.	Renewal of certification.
76.13.	Obtaining Departmental approval of a continuing education course.
76.14.	Reciprocity with other states.
76.15.	Suspension or revocation of certification.
76.16.	Contacting the Department.
76.17.	Preemption and local governmental authority.
76.18.	Advisory Board.
76.19.	Civil penalties.

§ 76.1. Compliance.

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

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

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

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

(1) A food establishment where only commercially pre-packaged food is handled and sold.

(2) A food establishment that does not handle potentially hazardous food.

(3) A food establishment that is a food manufacturing facility engaged in the manufacture of prepackaged foods and which does not manufacture potentially hazardous food.

§ 76.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless otherwise defined in the most current FDA Food Code:

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

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

Adulteration—An action that creates adulterated food.

Advisory Board or Board—The Food Employee Certification Advisory Board.

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

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

Asymptomatic—Presenting no symptoms of disease.

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

Bacteria—Single cell microorganisms.

Bacteria growth—Multiplication of bacteria through cell division.

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

Bleach—Sodium hypochlorite, a chemical sanitizer.

CIP or cleaned in place—

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

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

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

Certificateholder—A person holding a valid certificate.

Certified supervisory employe—A supervisory employe holding a valid certificate.

Cleanability—The property of being cleanable or accessible for cleaning.

Cleaning—The process by which dirt or other foreign matter is removed from an article.

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

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

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

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

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

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

Department—The Department of Agriculture of the Commonwealth.

Detergent—A cleaning agent.

Easily cleanable—

(i) A characteristic of a surface that:

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

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

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

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

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

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

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

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

Food—

(i) A raw, cooked or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(ii) The term does not include medicines and drugs.

Food Act—The Food Act (31 P. S. §§ 20.1—20.18).

Food contact surface—One of the following:

(i) A surface of equipment or a utensil with which food normally comes into contact.

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

Food establishment—

(i) A room, building, place or portion thereof or vehicle maintained, used or operated for the purpose of selling to the public, commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing, transporting or handling food.

(ii) The term includes retail food stores and public eating and drinking licensees, except those portions of establishments operating exclusively under milk or milk products permits and those portions of establishments operating exclusively under United States Department of Agriculture inspection.

(iii) The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast, homestead or inn as defined in the Public Eating and Drinking Place Law.

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

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

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

*Frozen dessert manufacturer—*A food establishment that is located in this Commonwealth and that is required to be licensed under authority of the Frozen Dessert Law (31 P. S. §§ 417-1—417.14).

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

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

*Handwash sink—*A sink specifically designated for hand washing.

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

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

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

*Highly susceptible population—*A group of persons who are more likely than other populations to experience

foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

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

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

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

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

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

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

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

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

*Parasite—*A living organism which derives its nourishment from another living organism.

*Pathogenic organism—*A disease-producing organism.

*Person—*A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

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

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

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

Potentially hazardous food—

(i) A food which consists in whole or in part of milk or milk products, eggs, meats, poultry, fish, shellfish, edible crustaceans or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(ii) The term does not include foods that have a pH level of 4.6 or below or a water activity of 0.85 or less under standard conditions or food products in hermetically sealed containers processed to maintain commercial sterility.

*Product protection—*Safety measures used to prevent food contamination.

Public eating and drinking place—

(i) A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge, or a place which otherwise conforms to the definition in section 1 of the Public Eating and Drinking Place Law (35 P. S. § 655.1).

(ii) The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

Public Eating and Drinking Place Law—The act of May 23, 1945 (P. L. 926, No. 369) (35 P. S. §§ 655.1—655.13).

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

Ready-to-eat food—

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

(ii) The term includes:

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

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

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

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

Reduced oxygen packaging—

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

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

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

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

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

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

Secretary—The Secretary of the Department.

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

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

Supervisory employe—An owner or a person employed by or designated by the business owner to fulfill the requirements of the act, and who has supervisory author-

ity and is responsible for the storage, preparation, display or serving of foods to the public in establishments regulated by the Department or local health organizations.

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

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

Time and temperature—Important factors in controlling the growth of pathogenic organisms in potentially hazardous foods.

Toxin—A poisonous substance produced by pathogenic organisms.

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

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

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

Water activity—A measure of the free moisture in a food. The term is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol AW (aw).

§ 76.3. Requirements for food establishments.

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

- (1) A food processor that manufactures potentially hazardous foods.
- (2) A food service that prepares potentially hazardous foods for the consumer, or serves potentially hazardous foods to the consumer, or both.
- (3) A bakery that processes potentially hazardous foods.
- (4) A retail food store that offers potentially hazardous food that is not exempt under § 76.1(d) to the consumer.
- (5) A frozen dessert manufacturer.

(b) *Certified supervisory employe.* A food establishment shall employ or designate at least one certified supervisory employe who is certified with respect to the industry-specific category of the food establishment. If a food establishment falls within more than one of the industry-specific categories in subsection (a), the food establishment shall employ or designate one or more certified supervisory employes so that, in the aggregate, there is a certified supervisory employe who is certified with respect to each of the applicable industry-specific categories of the food establishment.

(c) *New food establishment.* A new food establishment shall comply with subsection (b) within 90 days of the date it commences operation.

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

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

(f) *Availability of records.* Upon request by the Department, a food establishment shall make the records described in subsection (e) available for inspection by the Department during normal business hours of the food establishment.

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

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

§ 76.4. Eligibility to apply for certification.

A person shall successfully complete an approved certification training program and obtain a score of 70% or higher on an approved certification examination in order to be eligible to apply to the Department for certification.

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

(a) *Approval required.* A person shall obtain the Department's approval of a training program before the certification training program will be considered an approved certification training program for purposes of the act and this chapter. Substantive revisions or changes to a previously-approved certification training program shall also be approved by the Department. Although nonsubstantive revisions to a previously-approved certification training program do not require approval of the Department, notice of these nonsubstantive revisions shall be communicated in writing to the Department, at the address in § 76.16 (relating to contacting the Department), before being implemented. Approval under this section authorizes a person to develop and approve certification examinations, conduct certification examinations and certify the results of certification examinations to the Department in accordance with this chapter.

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

(c) *Obtaining an application form.* The Department will provide an application form for certification training program approval, or an application form for approval of revisions or changes to a previously-approved certification training program, upon request. Requests for these forms shall be directed to the Department at the address in § 76.16.

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

(1) The applicant's name, address and telephone number.

(2) A course syllabus demonstrating that the program would meet the minimum hour and content requirements in § 76.7 (relating to certification training programs: food safety protection and training standards).

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

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

(5) A copy of all teacher materials for the certification training program, unless the certification training program is a home-study program.

(6) A copy of all materials to be distributed to persons taking the program.

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

(8) Other information the Department might reasonably require in evaluating the certification training program.

(e) *Contents: application for approval of changes or revisions to a previously-approved certification training program.* The application form for approval of changes or revisions to a previously-approved certification training program shall require the applicant's name, address and telephone number and only the information listed in subsection (d) that is relevant to the change or revision with respect to which approval is sought.

(f) *Deadline for filing the application.* An application for certification training program approval or for approval of changes or revisions to a previously-approved certification training program shall be delivered to the Department, at the address in § 76.16, at least 90 days in advance of the proposed date upon which the program is to be conducted.

(g) *Departmental and Advisory Board action on application.* The Department and the Advisory Board will consider application materials submitted to them under subsection (d)(4)—(6) confidential and the proprietary documents of the applicant, and will make no distribution of these materials. The Advisory Board will consider whether to recommend Departmental approval of a certification training program. If a simple majority of a quorum of the Advisory Board recommends Departmental approval of a certification training program, the Department will grant its approval, if the other criteria in subsection (b) are met. The Department will mail the applicant its written approval of the certification training program, its denial of approval or a request for additional clarification or documentation.

§ 76.6. Certification training programs: Audit by Department.

The Department may attend and audit an approved certification training program to ascertain whether the program is conducted in accordance with the act and in conformity to the program syllabus. A person offering or

conducting an approved certification training program shall allow the Department's auditors entry to the program and provide copies of course materials.

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

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

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

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

- (1) Terms and definitions necessary to an understanding of foodborne illness. At a minimum, this shall include the following terms:
 - (i) Bacteria.
 - (ii) Communicable disease.
 - (iii) Confirmed disease outbreak.
 - (iv) Fungi.
 - (v) Potentially hazardous foods.
 - (vi) Infection.
 - (vii) Intoxication.
 - (viii) Parasite.
 - (ix) Pathogenic organism.
 - (x) Time and temperature.
 - (xi) Virus.
- (2) Microorganisms that commonly cause foodborne infection or intoxication.
- (3) The process by which microorganisms cause foodborne illness.
- (4) The definition, characteristics and recognition of potentially hazardous foods.
- (5) Factors that contribute to foodborne illness.
- (6) Prevention of food contamination from employes, equipment, premises, utensils and consumers.
- (7) Prevention of food contamination from chemicals.
- (8) Emerging pathogens.

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

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

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

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

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

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

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

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

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

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

- (i) Handwashing techniques and frequency.
- (ii) Relationship of hand contact to foodborne illness.
- (iii) Contamination by poor hygienic practices such as sneezing, coughing and scratching.
- (iv) Clothing.
- (v) Fingernails.
- (vi) Eating, drinking or using tobacco.

- (vii) Hair restraint.
- (viii) Animals in the workplace.
- (3) Employee health, including the following subjects:
 - (i) Infections or diseases which can be transmitted by open wound, sinus infection, virus or sore throat.
 - (ii) Identifying employees who may transmit infection or disease.
 - (iii) High risk groups.
 - (iv) Imposition and removal of employee exclusions and restrictions.
 - (v) Mandatory and voluntary reporting of foodborne illness.
- (4) Preventive measures such as training, written cleaning and sanitation schedules and procedures, self-inspection, integrated pest management and preventative maintenance.
- (e) *Topic: Food safety tracking system.* At least 3 hours of the instruction in a certification training program shall pertain to the topic of food safety tracking systems relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:
 - (1) Terms and definitions necessary to an understanding of a food safety tracking system. At a minimum, this shall contain the following terms:
 - (i) Adulteration.
 - (ii) Contamination.
 - (iii) Critical control point.
 - (iv) Cross-contamination.
 - (v) HACCP.
 - (vi) Product protection.
 - (2) Receiving food, including the following subjects:
 - (i) Approved sources.
 - (ii) Condition of food.
 - (iii) Thermometers and temperature checks.
 - (iv) Rejection for adulteration, temperature violations, distressed merchandise or condition of carrier.
 - (3) Safe storage of food, including the following subjects:
 - (i) Dry storage temperature and practices.
 - (ii) Refrigeration and freezer holding temperatures and product protection.
 - (iii) Shelf life.
 - (iv) Cross-contamination and adulteration.
 - (v) Product protection in retail service/display areas and storage areas.
 - (vi) Product labeling.
 - (vii) Labeling of poisonous or toxic materials.
 - (viii) Original containers.
 - (ix) Working containers.
 - (x) Food storage prohibitions, including locker rooms, toilet rooms, garbage rooms and under sewer lines.
 - (4) Preparation and processing of food, including the following subjects:
 - (i) Personal hygiene.

- (ii) Practices regarding disposable gloves.
- (iii) Contamination by chemical or physical additives.
- (iv) Cross-contamination.
- (v) Equipment/utensils.
- (vi) Hazards to humans in using equipment.
- (vii) Machine guards, slicer blades and protective light shields.
- (viii) Corrective actions.
- (ix) Potentially hazardous foods.
- (x) HACCP.
- (xi) Critical control point.
- (f) *Topic: Cleaning and sanitizing.* At least 2 hours of the instruction in a certification training program shall pertain to the topic of cleaning and sanitizing relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:
 - (1) Terms and definitions necessary to an understanding of cleaning and sanitizing procedures. At a minimum, this shall contain the following terms:
 - (i) Adulteration.
 - (ii) Air dry.
 - (iii) Bleach.
 - (iv) CIP.
 - (v) Cleaning.
 - (vi) Contamination.
 - (vii) Cross-contamination.
 - (viii) Detergent.
 - (ix) Easily cleanable.
 - (x) Food contact surface.
 - (xi) Nonfood contact surface.
 - (xii) pH.
 - (xiii) ppm.
 - (xiv) Sanitization.
 - (xv) Test strips.
 - (xvi) Warewashing.
 - (xvii) Quaternary ammonium compound.
 - (2) MSDS Fact Sheets.
 - (3) Proper use of hot water or chemicals in sanitizing.
 - (4) The difference between cleaning and sanitizing.
 - (5) Types of sanitizers, their usage and the use of test strips.
 - (6) Detergents.
 - (7) Procedures to wash-rinse-sanitize.
 - (8) The frequency with which food contact surfaces, utensils, equipment and nonfood contact surfaces should be sanitized.
 - (9) Equipment.
 - (10) Manual warewashing.
 - (11) Mechanical warewashing.
 - (12) The proper use of cleaning methods such as air drying, wiping cloths, CIP and water temperature.
- (g) *Topic: Facilities and equipment layout.* At least 2 hours of a certification training program shall pertain to the topic of facilities and equipment layout relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:
 - (1) Terms and definitions necessary to an understanding of cleaning and sanitizing procedures. At a minimum, this shall contain the following terms:
 - (i) Adulteration.
 - (ii) Air dry.
 - (iii) Bleach.
 - (iv) CIP.
 - (v) Cleaning.
 - (vi) Contamination.
 - (vii) Cross-contamination.
 - (viii) Detergent.
 - (ix) Easily cleanable.
 - (x) Food contact surface.
 - (xi) Nonfood contact surface.
 - (xii) pH.
 - (xiii) ppm.
 - (xiv) Sanitization.
 - (xv) Test strips.
 - (xvi) Warewashing.
 - (xvii) Quaternary ammonium compound.
 - (2) MSDS Fact Sheets.
 - (3) Proper use of hot water or chemicals in sanitizing.
 - (4) The difference between cleaning and sanitizing.
 - (5) Types of sanitizers, their usage and the use of test strips.
 - (6) Detergents.
 - (7) Procedures to wash-rinse-sanitize.
 - (8) The frequency with which food contact surfaces, utensils, equipment and nonfood contact surfaces should be sanitized.
 - (9) Equipment.
 - (10) Manual warewashing.
 - (11) Mechanical warewashing.
 - (12) The proper use of cleaning methods such as air drying, wiping cloths, CIP and water temperature.

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

- (i) Air gap.
 - (ii) Backflow device.
 - (iii) Cleanability.
 - (iv) Potable water.
 - (v) Handwash sink.
 - (vi) Plan review.
- (2) Proper equipment design and location.
- (3) Construction of floors, walls and ceilings.

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

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

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

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

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

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

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

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

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

§ 76.8. Format of a certification examination.

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

§ 76.9. Reporting results of a certification examination.

A person who proctors a certification examination shall, within 30 calendar days of proctoring the examination, mail or deliver to any person who took the examination written confirmation of that person's examination score, the date and location of the examination and the industry-specific category of food establishment addressed in the examination. The examination score shall be expressed as the percentage of correct answers. Within that same 30-day time period, the proctor shall mail the same information to the Department at the address in § 76.16 (relating to contacting the Department), using a form provided by the Department upon request.

§ 76.10. Applying for certification.

(a) *Application required.* A person who has attained a score of 70% or higher on a certification examination may apply to the Department for certification. Certification is granted through issuance of the certificate described in § 76.11 (relating to certificate).

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

(1) The name and mailing address of the person seeking certification.

(2) The location and dates of any approved certification program completed by the person seeking certification.

(3) The location and date of the certification examination.

(4) The industry-specific food establishment category (as described in § 76.3(a) (relating to requirements for food establishments)) with respect to which certification is sought.

(5) Other information the Department might reasonably require in determining whether to issue the applicant a certificate.

(c) *Application fee.* A person applying for certification under this section shall pay an application fee of \$20, by check or money order made payable to the "Commonwealth of Pennsylvania." This payment shall accompany the application.

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

§ 76.11. Certificate.

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

(1) The name of the person to whom it is issued.

(2) The industry-specific category of food establishment, as described in § 76.3(a) (relating to requirements for food establishments), with respect to which the person is certified.

(3) The date upon which the certificate was issued.

(4) The expiration date of the certificate, which shall be 5 years from the date of issuance.

(5) A unique identification number.

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

(7) Other information the Department might reasonably include on the certificate.

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

of a certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

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

(d) *Replacement of certificate.* The Department will issue a certificateholder a replacement certificate and mail it to the certificateholder within 30 days of receiving a written request for a replacement certificate from the certificateholder and an explanation of the need for the replacement certificate.

§ 76.12. Renewal of certification.

(a) *General requirement.* A certificateholder shall obtain at least 7.5 hours of approved continuing education in the area of food safety and sanitation every 5 years, commencing with the date the certificate is issued. An approved continuing education course will not require a written examination as a condition of completion. If a certificateholder fails to obtain this approved continuing education and deliver a complete certification renewal application to the Department prior to the expiration date of the certificate, the certificate shall expire and the certificateholder shall successfully complete an approved certification program and a certification examination before certification will be granted.

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

- (1) The name and mailing address of the applicant.
- (2) Copies of course descriptions, course-completion certificates, college course transcripts and descriptions and similar documentation to evidence compliance with the requirement in subsection (a).
- (3) The industry-specific food establishment category or categories, as described in § 76.3(a) (relating to requirements for food establishments), with respect to which the applicant is certified.
- (4) The identification number and expiration date of the certificate.
- (5) Other information the Department might reasonably require in considering renewal of the certificate.

(c) *Application fee.* A person applying for recertification under this section shall pay an application fee of \$20, by check or money order made payable to the "Commonwealth of Pennsylvania." This payment shall accompany the application.

(d) *Departmental action on application.* The Department will, within 30 days of receiving an application, mail the applicant a certificate (as described at § 76.11(a) (relating to certificate)), its denial of renewal of certification or a request for additional clarification or documentation.

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

(a) *Approval required.* A person shall obtain the Department's approval of a continuing education course

before the course will be considered an approved continuing education course for purposes of § 76.12 (relating to renewal of certification). Revisions or changes to a previously-approved continuing education course must also be approved by the Department.

(b) *General requirements for approval.* The Department will approve a continuing education course if it instructs participants in current food protection practices and has been recommended for approval by the Advisory Board.

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

- (1) The name and mailing address of the applicant.
- (2) A course syllabus demonstrating that the course addresses regulatory or food industry changes, updates or advancements, or offers a general review of food safety considerations and procedures.
- (3) A copy of all teaching materials for the course.
- (4) A copy of all materials to be distributed to persons taking the course.
- (5) The proposed sites and dates of the course.
- (6) Other information the Department might reasonably require in evaluating whether to approve the continuing education course.

(d) *Departmental and Advisory Board action on application.* The Department and the Advisory Board will consider application materials submitted to them under subsection (c)(3) and (4) confidential and the proprietary documents of the applicant, and will make no distribution of these materials. The Advisory Board will consider whether to recommend Departmental approval of the continuing education course. If a simple majority of a quorum of the Advisory Board recommends Departmental approval of a continuing education course, the Department will grant its approval, if the other requirements of subsection (b) are met. The Department will mail the applicant its written approval of the continuing education course, its denial of approval or a request for additional clarification or documentation.

§ 76.14. Reciprocity with other states.

The Department may accept certification issued to a person by another state if the following apply:

- (1) The other state has requirements for certification that are comparable to those imposed by the act.
- (2) The Department and the other state jurisdiction have entered into a reciprocal agreement to accept each state's certification program as meeting the requirements of the act.

§ 76.15. Suspension or revocation of certification.

(a) *Basis for action.* The Department may suspend or revoke the certification of a certificateholder if that person does one or more of the following:

- (1) Violates a provision of this chapter.
- (2) Violates another sanitation regulation.
- (3) Violates the Public Eating and Drinking Place Law or its attendant regulations.
- (4) Violates the Food Act or its attendant regulations.

(b) *Notice.* The Department will provide a certificateholder with written notice of its intention to

suspend or revoke certification, which will apprise the certificateholder of the duration of the suspension or revocation and afford that person notice and opportunity for an administrative hearing before the Department prior to the effective date of the suspension or revocation.

(c) *Delivery of notice.* The Department will deliver the notice described in subsection (b) to the affected certificateholder by personal service or by regular mail to the address provided by the certificate holder on his application for certificate under § 76.10 (relating to applying for certification).

(d) *Reinstatement.* If a period of suspension ends before the expiration date of the suspended certificate, the certificate will be considered reinstated at the end of the suspension period. If a certificate is suspended and the period of suspension ends after the expiration date of the suspended certificate, the certificate is expired and the holder of the expired certificate may reapply for certification at the end of the suspension period in accordance with the act and this chapter.

§ 76.16. Contacting the Department.

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

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

§ 76.17. Preemption and local governmental authority.

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

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

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

(d) *Effect of a local government unit's decision with respect to exercising option.* If a county, city, borough, incorporated town or township having a food employe certification program which was in effect prior to September 1, 1994, does not exercise the option described in subsection (c) or does not obtain Departmental approval

of its certification training program with respect to any particular industry-specific category of food establishment, the unit of local government shall retain exclusive responsibility for certification of the food employes who would otherwise fall into that industry-specific category.

§ 76.18. Advisory Board.

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

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

(1) The Secretary, or a designee, who will serve as chairperson.

(2) The Chairperson of the Agriculture and Rural Affairs Committee of the Senate, or a designee.

(3) The Chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, or a designee.

(4) The Minority Chairperson of the Agriculture and Rural Affairs Committee of the Senate, or a designee.

(5) The Minority Chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, or a designee.

(6) A consumer representative.

(7) Two representatives of production agriculture.

(8) At least one person recommended by each of the following:

(i) The Pennsylvania Association of Milk Dealers.

(ii) The Pennsylvania Restaurant Association.

(iii) The Pennsylvania Food Merchants Association.

(iv) The Pennsylvania Convenience Store Council.

(v) The Pennsylvania Bakers Association.

(vi) The Pennsylvania Food Processors Association.

(vii) The Pennsylvania Veterinary Medical Association.

(viii) The County Commissioners Association of Pennsylvania.

(ix) The Pennsylvania League of Cities and Municipalities.

(x) The Pennsylvania State Association of Boroughs.

(xi) The Pennsylvania State Association of Township Commissioners.

(xii) The Pennsylvania State Association of Township Supervisors.

(xiii) The Pennsylvania School Food Service Association.

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

(c) *Terms of appointees.* Advisory Board members described in subsection (b)(1), (2), (3), (4) or (5) shall be ex officio members. The terms of the initial appointees of the Secretary under subsection (b)(6)—(8) will be 2, 3 or 4 years, as determined by the Secretary, and will be staggered so that the terms of approximately 1/3 of these initial appointees expire in each of the 2nd, 3rd and 4th years of the Advisory Board's existence. Thereafter, the term of each of these appointees shall be 3 years. The

term of a person appointed to replace another member whose term has not expired shall be only the unexpired portion of that term. Persons may be appointed to successive terms.

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

§ 76.19. Civil penalties.

(a) *General*. The Department may assess a civil penalty of up to \$300 against a person or food establishment that violates the act or this chapter for the first offense. The Department may assess a penalty of up to \$1,000 for each subsequent offense.

(b) *Notice*. The Department will provide a person or food establishment written notice of a violation of the act or this chapter and an opportunity for an administrative hearing on the violation prior to the imposition of a civil penalty.

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

[Pa.B. Doc. No. 99-1661. Filed for public inspection October 1, 1999, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 72]

Sewage Enforcement Officer Application Requirements for Certification

The Environmental Quality Board (Board) by this order adopts an amendment to Chapter 72 (relating to administration of sewage facilities permitting program). This final-form rule clarifies procedures relating to applications for certification of sewage enforcement officers (SEOs) outlined in § 72.54 (relating to applications for certification) to read as set forth in Annex A.

The Board approved this final-form rule at its meeting of July 20, 1999.

A. Effective Date

This amendment will go into effect immediately upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Milton Lauch, Chief, Division of Wastewater Management, Bureau of Water Quality Protection, 11th Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 787-8184, or William S. Cumings, Jr., Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, 400 Market

Street, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site at <http://www.dep.state.pa.us>.

C. Statutory Authority

The amendment is being promulgated under the authority of section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510.20).

D. Background and Purpose of Final Regulation

This final-form rule is intended to clarify the requirements of § 72.54(a) relating to application requirements for persons who submit applications for certification as SEOs within this Commonwealth. This section requires that a candidate for certification as an SEO successfully complete precertification training courses administered by the Department prior to sitting for an examination for that certification. Currently, precertification training is being provided to candidates for certification shortly before the scheduled examination dates.

Under existing § 72.54(a), applicants for certification are required to submit documentation of the successful completion of precertification training to the State Board for Certification of Sewage Enforcement Officers (Certification Board) at least 40 days prior to the scheduled examination. As explained in the Preamble to the proposed rulemaking at 29 Pa.B. 979 (February 20, 1999), the Department and the Certification Board believe it is appropriate to provide a more streamlined process for the submission of documentation concerning the completion of training, particularly where the training has been completed shortly before the scheduled date of a certification examination. Accordingly, this final-form rule establishes a deadline for the submission of training documentation from 40 days prior to the examination to "no later than the commencement of the scheduled examination for which the precertification training was held."

A notice of proposed rulemaking was published at 29 Pa.B. 979. The notice provided a 30-day public comment period. The Board received one comment on the proposal, and a Comment and Response Document has been developed. Draft copies of this final rulemaking and the Comment and Response Document were provided to members of the Sewage Advisory Committee and the Certification Board, and the members had no objections to its adoption by the Board.

E. Summary of the Comments and Response on the Proposed Rulemaking and Amendment to the Proposed Rule

The Board received a comment from the Certification Board which was fully supportive of the proposed amendment. The Certification Board suggested, however, that § 72.54(a) be further amended by reducing the minimum time for submission of an application for the certification examination and the related fee from 40 days to 30 days. The Certification Board asserted this reduction of the time period would give applicants more flexibility, while at the same time giving the Certification Board sufficient time to receive and evaluate applications for certification. The Board concurs with this recommendation and has adopted the change in the final rulemaking.

F. Benefits, Costs and Compliance

Executive Order 1996-1 provides for a cost/benefit analysis of the final-form rule.

Benefits

Applicants for certification as SEOs will benefit from the amendment because they will not need to submit documentation of the successful prerequisite training for certification until the commencement of the scheduled examinations, which will be held shortly after the conclusion of the training course. In addition, applicants for certification will have more flexibility in submitting applications as a result of the reduction in the minimum time for submission of applications.

Costs

There are no additional costs to the Commonwealth, its citizens or applicants for certification as SEOs associated with this amendment.

Compliance Costs

The amendment is not expected to impose any additional compliance costs on the regulated community.

G. Sunset Review

This final-form regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 9, 1999, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Chairpersons of the Committees with a copy of the comments received, as well as other documentation.

In preparing this final-form rule, the Department considered the comments received from the public. No comments were received from IRRC or either of the Committees.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), this final-form rule was deemed approved by the Senate and House Committees on August 23, 1999. IRRC met on September 9, 1999, and approved the final-form rule in accordance with section 5.1(e) of the Regulatory Review Act.

I. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This final-form rule does not enlarge the purpose of the proposal published at 29 Pa.B. 979.

(4) This final-form rule is necessary and appropriate for the administration and enforcement of the authorizing acts identified in Section C of this Preamble.

J. Order

The Board, acting under authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 72, are amended by amending § 72.54 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Committees as required by the Regulatory Review Act.

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5031 (September 25, 1999).)

Fiscal Note: Fiscal Note 7-344 remains valid for the final adoption of the subject regulation.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 72. ADMINISTRATION OF SEWAGE FACILITIES PERMITTING PROGRAM

Subchapter D. CERTIFICATION OF SEWAGE ENFORCEMENT OFFICERS

§ 72.54. Applications for certification.

(a) Correctly completed applications and an application fee of \$25 shall be received by the Board at least 30 days prior to the scheduled examinations. In addition, the applicant shall provide documentation of the successful completion of required precertification training courses to the Board no later than the commencement of the scheduled examination for which the precertification training course was held.

(b) Incomplete or erroneous applications shall be returned to the applicant.

(c) The application fee is a processing fee and will not be refunded.

[Pa.B. Doc. No. 99-1662. Filed for public inspection October 1, 1999, 9:00 a.m.]

**ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 121, 126 AND 139]
Gasoline Volatility Requirements—Low Reid Vapor Pressure**

The Environmental Quality Board (Board) amends Chapters 121, 126 and 139 (relating to general provisions; standards for motor fuels; and sampling and testing) to read as set forth in Annex A. The amendments eliminate the use of Federal reformulated gasoline (RFG) as a compliant fuel in the Pittsburgh-Beaver Valley area during the ozone season. The amendments also provide that compliance records shall be kept onsite for all points in the distribution network except at retail facilities. Retail

facilities are required to retain compliance records onsite for the correct ozone season only. In addition, the amendments make a technical language correction relating to sampling procedures. The Board approved the final amendments at its July 20, 1999, meeting.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4310; or R. A. Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final rulemaking is available electronically through the Department of Environmental Protection's (Department) Web Site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

This action is being taken under the authority of section 5 of the Air Pollution Control Act (35 P.S. § 4005), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Summary of the Amendments*

These amendments eliminate the use of RFG as a compliant fuel in the Pittsburgh-Beaver Valley Area during the ozone season. Because of concerns with implementation of the existing regulation as it relates to RFG, the Department is eliminating the RFG provisions. Since refiners and marketers have been supplying low Reid vapor pressure (RVP) gasoline during the ozone season, these amendments will have minimal practical consequences. While this low RVP gasoline is more stringent than the Federal requirement, it is necessary because it is part of a comprehensive plan for the Pittsburgh area to attain and maintain the National health-based standard for ground level ozone. These amendments also require that compliance records be kept onsite for all points in the distribution network except at retail facilities. Retail facilities are required to retain compliance records onsite for the correct ozone season only. Finally, these amendments also correct the technical language relating to sampling procedures.

These amendments were submitted to and approved by the Air Quality Technical Advisory Committee (AQTAC) and the Small Business Assistance Program Compliance Advisory Committee.

E. *Summary of Comments*

There were four commentators to the proposed rulemaking.

One commentator supported the move to require all gasoline sold in the Pittsburgh area to comply with the RVP standard of 7.8 pounds per square inch (psi).

The Board appreciates the support for this rule change.

All of the commentators believed that requiring facilities to keep records onsite for 2 years imposes additional and unnecessary recordkeeping on the regulated community. The commentators requested that the regulation be

changed to allow records for retail facilities to be stored elsewhere and that the records could be provided when requested within a short lead time. Another commentator proposed that the regulation be amended to require that records be kept onsite only during the current ozone season and that records be retained after that at a designated location for the remainder of the 2-year retention period.

While the Board understands that there may be space limitations at some facilities, the requirement to maintain records onsite at points in the distribution chain is essential for enforcement of the program. A lapse in time between an inspection and the receipt of pertinent records would seriously hinder the effectiveness of the program, especially when a violation of the volatility standard is discovered. Therefore, to retain the ability to conduct effective inspections, the Board will not make the suggested change. The Board does not agree that the onsite recordkeeping requirement places unnecessary burdens on every point in the distribution network; however, the Board does believe that the requirement to keep records onsite for 2 years could place unnecessary burdens on retail facilities that have limited space onsite. Therefore, the rule will be amended to require retail stations to keep the records onsite only during the current compliance period (June 1st through September 15th). The records then may be moved to an alternate location for the remainder of the 2-year retention period.

One commentator believed it is unnecessary to require terminals to be held to a compliance date of May 1st for low RVP fuel. The commentator recommended the terminal compliance date be changed to May 15th which will provide adequate time to ensure that all retail stations are turned over to 7.8 psi RVP by June 1st. The program start and end dates are not proposed to be changed because the Board believes that May 1st is the appropriate starting date.

When the proposed clean fuels program for the Pittsburgh area was originally published on May 3, 1997, the Board received eight separate comments detailing the importance of setting the compliance dates to be consistent with the dates in the Federal summertime volatility program (May 1st start date at the terminal level, June 1st start date at the retail stations, and September 15th as the end date). The Board agreed with the need for consistency with the Federal volatility program and the rule was revised accordingly. The Board does not believe it appropriate to change any of these dates in light of the number of comments received in response to the May 3, 1997, proposal. Furthermore, it is likely that members of the public and the regulated community did not comment again on this issue because the program start and end dates were not proposed to be changed.

One commentator states that the requirement to have gasoline with an RVP of 7.8 psi at the terminal level by May 1st contradicts the Federal requirement to have 9.0 psi RVP gasoline at terminals by the same date. The commentator believed that the Commonwealth has not demonstrated in its State Implementation Plan (SIP) the need for an RVP level in May that is more stringent than the Federal standard to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. In addition, the commentator believed that unusual supply disruptions may occur if the Commonwealth's program dates are not in line with the Federal program.

The program start and end dates were not proposed to be changed because the Board believes that the proposed dates are the appropriate dates. Under section

211(c)(4)(A) of the Federal Clean Air Act, states are preempted from prescribing a control regarding a fuel characteristic that is not identical to the Federal requirement. However, under section 211(c)(4)(C), the United States Environmental Protection Agency (EPA) is authorized to grant a state a waiver of this preemption if the state control is necessary to achieve the NAAQS.

The Commonwealth requested the necessary waiver, and on June 8, 1998, the EPA published a direct final rule in the *Federal Register* proposing to grant the Commonwealth that waiver under the Clean Air Act. No negative comments were received, and a waiver was granted to the Commonwealth effective on July 23, 1998. This waiver allows the use of fuel with an RVP standard more stringent than the Federal requirement in the Pittsburgh ozone nonattainment area. This same EPA action finalized approval of the Commonwealth low RVP program distribution schedule that requires terminals to be fully converted to 7.8 psi RVP fuel by May 1st and retail and wholesale purchaser-consumer facilities to be converted to 7.8 psi RVP fuel by June 1st. Consequently, this approved SIP revision is now Federal law. Since this SIP revision was approved by the EPA, it is not subject to review at the State level as the commentator suggests.

The comment that unusual supply disruptions may occur if the suggested change is not made is unwarranted. Low RVP fuel was required in the Pittsburgh ozone nonattainment area at the terminal level beginning on May 1, 1998, and at retail stations by June 1, 1998, and no unusual supply or price disruptions were reported. The program ran smoothly by all accounts and the compliance rate was extremely high.

F. Summary of the Regulatory Revisions

The Board deletes the definition for the term "RFG—Federal Reformulated Gasoline" and eliminates RFG from the term "compliant fuel." The Board also eliminates references to RFG in §§ 126.301—126.303 (relating to compliant fuel requirement; recordkeeping and reporting; and compliance and test methods). In addition, the Board clarifies the record retention requirements in § 126.302 that records shall be kept onsite for all points in the distribution network except at retail facilities. Retail facilities are required to retain compliance records onsite for the current ozone season only. Finally, the Board corrects technical language in § 139.4(18) (relating to references).

G. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the amendments.

Compliance Costs

There are no increased costs to the regulated community as a result of these amendments. Since low RVP gasoline is already required in the area, there will be no additional cost to the public or to local or State governments. Low RVP gasoline on average is 2¢ per gallon less than RFG gasoline. In addition, the vast majority of stations already use low RVP gasoline in place of RFG gasoline.

Compliance Assistance Plan

The Board plans to educate and assist the public and regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

Paperwork Requirements

There are no additional recordkeeping and reporting costs for an entity that sells or transfers gasoline intended for use in the seven county Pittsburgh-Beaver Valley Area during the ozone season.

H. Sunset Review

These final-form regulations will be reviewed in accordance with the Sunset Review schedule published by the Board to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 8, 1998, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Committees on August 23, 1999. IRRC met on September 9, 1999, and deemed approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

J. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 28 Pa. B. 4792 (September 26, 1998).

(4) These final-form regulations are necessary and appropriate for administration and enforcement of authorizing acts defined in Section C of this Preamble and are reasonably necessary to achieve and maintain the NAAQS for ozone.

K. Order of the Board

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 121, 126 and 139, are amended by amending §§ 121.1, 126.301—126.303 and 139.4 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

JAMES M. SEIF,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5032 (September 25, 1999).)

Fiscal Note: Fiscal Note 7-341 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Compliant fuel—Low RVP gasoline.

* * * * *

RACT—*Reasonably Available Control Technology*—The lowest emission limit for VOCs or NO_x that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

RFP—*Reasonable Further Progress*—The annual incremental reduction in emissions of an air contaminant as required by section 172(c)(2) of the Clean Air Act (42 U.S.C.A. § 7502(c)(2)), for the purpose of ensuring attainment of the applicable NAAQS by the applicable statutory deadline.

* * * * *

CHAPTER 126. STANDARDS FOR MOTOR FUELS

Subchapter C. GASOLINE VOLATILITY REQUIREMENTS

§ 126.301. Compliant fuel requirement.

(a) This subchapter applies to gasoline which is sold or transferred into or within the Pittsburgh-Beaver Valley Area during the period May 1 through September 15, 1998, and continuing every year thereafter.

(b) A refiner, importer, distributor, reseller, terminal owner and operator or carrier, may not:

(1) Sell, exchange or supply gasoline that is not a compliant fuel during the period described in subsection (a).

(2) Blend, mix, store or transport or allow blending, mixing, storing or transporting of compliant fuel with noncompliant fuel during the period described in subsection (a).

(c) A retailer or wholesale purchaser-consumer may not sell, exchange or supply gasoline that is not a compliant fuel during the period June 1 through September 15, 1998, and continuing every year thereafter.

§ 126.302. Recordkeeping and reporting.

(a) Beginning with the terminal owner or operator who sells or transfers gasoline intended for use in the Pittsburgh-Beaver Valley Area during the period described in § 126.301(a) (relating to compliant fuel requirements), each time the physical custody of or title to a shipment of gasoline changes hands, other than when gasoline is sold or transferred for use in motor vehicles at a retail outlet or wholesale purchaser-consumer's facility, the transferor shall provide to the transferee a copy of the record described in this subsection. This record shall legibly and conspicuously contain, at a minimum, the following information:

- (1) The date of the sale or transfer.
- (2) The name and address of the transferor.
- (3) The name and address of the transferee.
- (4) The location of the gasoline at the time of transfer.
- (5) The volume of gasoline which is being sold or transferred.

(6) A statement or grade code certifying that the gasoline has an RVP of 7.8 pounds per square inch or less per gallon.

(b) A person who transports, stores or sells compliant fuel that is intended for use in the Pittsburgh-Beaver Valley Area during the period described in § 126.301(a), shall segregate the compliant fuel from noncompliant fuel and the documentation described in subsection (a) shall accompany the compliant fuel at all times.

(c) Each person in the gasoline distribution network shall maintain records containing the compliance information listed in subsection (a). These records shall be retained for at least 2 years from the date of the sale or transfer of compliant fuel.

(d) The records containing the compliance information in subsection (a) for the period described in subsection (c) shall be kept onsite at each point in the distribution network except for retail outlets. Retail outlets shall retain these records for the period described in subsection (c) and only those records for the current period described under § 126.301(c) shall be kept onsite. At the end of each period described under § 126.301(c), these records may be transferred to an alternate location for the remainder of the period described under subsection (c) and be made available to the Department upon request.

§ 126.303. Compliance and test methods.

Compliance with the 7.8 pounds per square inch RVP standard shall be determined by use of the sampling and testing methods specified in this section. Sampling or testing of gasoline required by this chapter shall be accomplished as follows:

(1) Sampling of gasoline for the purpose of determining compliance with this subchapter shall be conducted in accordance with 40 CFR Part 80, Appendix D (relating to sampling procedures for fuel volatility).

(2) Testing of gasoline for purposes of determining compliance with this rule shall be conducted in accordance with 40 CFR Part 80, Appendix E (relating to test for determining Reid Vapor Pressure (RVP) of gasoline and gasoline-oxygenate blend).

CHAPTER 139. SAMPLING AND TESTING

**Subchapter A. SAMPLING AND TESTING
METHODS AND PROCEDURES**

GENERAL

§ 139.4. References.

The references referred to in this subchapter are as follows:

* * * * *

(18) "Sampling procedures for fuel volatility," 40 CFR Part 80, Appendix D (relating to sampling procedures for fuel volatility).

* * * * *

[Pa.B. Doc. No. 99-1663. Filed for public inspection October 1, 1999, 9:00 a.m.]

**Title 28—HEALTH AND
SAFETY**

**HEALTH CARE COST CONTAINMENT COUNCIL
[28 PA. CODE CH. 912]
Severity Methodology**

The Health Care Cost Containment Council (Council), under the authority of section 5(b) of the Pennsylvania Health Care Cost Containment Act (35 P. S. § 449.5(b)), is submitting final-form regulations to amend §§ 912.1, 912.3 and 912.31 (relating to legal base and purpose; definitions; and principle). The amendments remove specific reference to a particular methodology currently used by the Council to afford the Council flexibility in selecting an alternative methodology for measuring provider quality and provider service effectiveness.

Purpose

The purpose is to give the Council greater flexibility in responding to the marketplace than the present regulations allow. The amendments will enable the Council to change its vendor if the vendor fails to meet its contractual requirements.

Summary of Amendments

The amendments remove specific reference to the MedisGroups methodology to afford the Council flexibility in selecting a methodology for measuring provider quality and provider service effectiveness.

Affected Parties

All data sources in this Commonwealth currently are required to use the MedisGroups methodology.

Paperwork Requirements

The amendments will not impose additional paperwork on the private sector, the general public or the Commonwealth and its political subdivisions.

Fiscal Impact

The amendments will have no fiscal impact on the regulated community, the State or local governments.

Effective Date

The amendments will be effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

The Council continually monitors its regulations. Therefore, no sunset date has been assigned.

Contact Person

For further information, contact Marc P. Volavka, Executive Director, Health Care Cost Containment Council, 225 Market Street, Suite 400, Harrisburg, PA 17101, (717)232-6787.

Response to Public Comment

Written comments, suggestions or objections were requested within a 30-day period after publication of the proposed amendments at 29 Pa.B. 332 (January 16, 1999). Comments were submitted by the Hospital and Healthsystem Association of Pennsylvania and the Hospital Council of Western Pennsylvania. In addition, the Council received comments from the Pennsylvania Medical Society after the 30-day comment period ended. In preparing the final-form regulations, the Council has considered all comments received.

In general, the comments supported the intent of the proposed amendments. It was suggested by the Hospital and Healthsystem Association of Pennsylvania and the Hospital Council of Western Pennsylvania, however, that the Council should remove specific reference to "clinical" factors in the definition of "patient severity." The Council's detailed response to these comments was submitted to the Independent Regulatory Review Commission (IRRC) with the final-form regulations. The Council's response outlines reasons why this suggestion was not incorporated into the final-form regulations, the main reason being that severity adjustment systems, whether they are "clinical" or "administrative" systems, incorporate some degree of "clinical" information. A copy of the complete response is available to the public upon request.

Regulatory Review

On January 5, 1999, as required by section 5(a) of the Regulatory Review Act (71 P. S. § 745.4(a)), the Council submitted copies of the proposed revisions, which were published at 29 Pa.B. 332, to IRRC, the Senate Public Health and Welfare Committee and House Health and Human Services Committee for review and comment. The Council, in accordance with section 5(b.1) of the Regulatory Review Act (71 P. S. § 745.5(b.1)), also provided IRRC and the Committees with the Regulatory Analysis Form prepared in compliance with Executive Order 1982-2 (relating to improving government regulations) and copies of comments received.

In preparing the final-form regulations, the Council has considered the comments received from the public and IRRC. No comments on the proposed amendments were received from either of the legislative committees. The text of the final-form regulations is identical to that submitted under the proposed rulemaking.

The final-form regulations were deemed approved by the Senate Public Health and Welfare Committee and the House Health and Human Services Committee on August 18, 1999. IRRC met on August 19, 1999, and approved the final-form regulations under section 5(c) of the Regulatory Review Act.

Order

(a) The regulations of the Council, 28 Pa. Code Chapter 912, are amended by amending §§ 912.1, 912.3 and 912.31 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Council shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Council shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The amendments adopted by this order shall take effect upon publication in the *Pennsylvania Bulletin*.

LEONARD BORESKI,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa. B. 4749 (September 4, 1999). For a statement of policy relating to this rulemaking, see 29 Pa.B. 5109 (October 2, 1999).)

Fiscal Note: 100-14. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART VI. HEALTH CARE COST CONTAINMENT COUNCIL

CHAPTER 912. DATA REPORTING REQUIREMENTS

Subchapter A. GENERAL PROVISIONS

§ 912.1. Legal base and purpose.

(a) This chapter is promulgated by the Council under section 6 of the act (35 P. S. § 449.6).

(b) This chapter establishes submission schedules and formats for the collection of data from health care facilities specified in section 6 of the act.

§ 912.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Major ambulatory service—Surgical or medical procedures, including diagnostic and therapeutic radiological procedures, commonly performed in hospitals or ambulatory service facilities, which are not of a type commonly performed or which cannot be safely performed in physicians' offices and which require special facilities, such as operating rooms or suites or special equipment, such as fluoroscopic equipment or computed tomographic scanners, or a postprocedure recovery room or short term convalescent room.

Pennsylvania Uniform Claims and Billing Form format—The Uniform Hospital Billing Form UB-82/HCF-1450, and the HCFA 1500, or their successors, as developed by the National Uniform Billing Committee, with additional fields as necessary to provide the data in section 6(c) and (d) of the act (35 P. S. § 449.6(c) and (d)).

* * * * *

Subchapter B. PENNSYLVANIA UNIFORM CLAIMS AND BILLING FORM SUBMISSION SCHEDULES

§ 912.31. Principle.

The Council may, within its discretion and for good reason, grant exceptions to sections within this chapter

when the policy and objectives of this chapter and the act are otherwise met.

[Pa.B. Doc. No. 99-1664. Filed for public inspection October 1, 1999, 9:00 a.m.]

Title 58—RECREATION

STATE HORSE RACING COMMISSION

[58 PA. CODE CHS. 163 AND 165]

Rules of Racing

The State Horse Racing Commission (Commission), acting under authority conferred by section 202(a) of the Race Horse Industry Reform Act (4 P. S. § 325.202(a)), hereby amends Chapters 163 and 165 (relating to rules of racing; and administrative rules).

The Commission reviewed this order and considered its purpose and likely impact in accordance with Executive Order 1996-1, "Regulatory Review and Promulgation." This order will help clarify and update the present rules of racing and bring them into conformance with surrounding racing jurisdictions. This order also addresses a compelling public interest and is otherwise in compliance with Executive Order 1996-1.

Notice and Comments

Notice of proposed rulemaking was published at 28 Pa.B. 4797 (September 26, 1998). These final-form regulations are being adopted with changes to the proposed rulemaking. The Commission only received comments from one individual commentator and from the Honorable Senator Robert J. Thompson, Vice Chairperson of the Senate State Government Committee. The Commission also received comments and suggested changes from the Independent Regulatory Review Commission (IRRC). The comments and the Commission's response follow:

Section 163.95. Coupled entries

The individual commentator expressed his concern that the uncoupling of entries for horses entered by the same trainer could lead to hidden ownership of horses or other devious acts. The Commission presumes the individual commentator was in essence referring to possible collusion between trainers and jockeys to affect the outcome or fix the race. As the Commission explained in its proposed rulemaking, in today's heavily regulated thoroughbred industry and in light of the extensive recordkeeping requirements and significant investigative capabilities, the potential for hidden ownership or collusion has been greatly diminished, if not completely eradicated. Nevertheless, the Commission is ever mindful of its legislative mandate to protect the integrity of the sport and pari-mutuel wagering system for patrons in this Commonwealth. Accordingly, the Commission believes the benefit of the uncoupling amendment to the patron exceeds the potential risk of hidden ownership.

IRRC stated that the language of § 163.95(b) was not consistent with the Commission's overall intention of removing the restriction for trainers from the coupled entry rule. IRRC suggested appropriate language, which would be phrased in the positive and therefore, less confusing. The Commission agrees with IRRC's suggested changes and has implemented those changes to subsection (b).

IRRC also asked the Commission to explain the Commission's rationale for prohibiting a trainer from having

more than two horses in the same race, but not an owner. Proposed § 163.95(d), which specifically prohibits trainers from entering more than two horses, has been proposed by the Commission to bring its regulations into conformity with surrounding racing jurisdictions. As previously stated, while the Commission believes the benefit of updating the coupled entry rules outweighs the potential for collusion or the appearance of collusion, the Commission nevertheless believes that certain reasonable controls, such as those in § 163.95(d) should be implemented or maintained, or both.

Section 165.531. Definitions.

IRRC suggested the Commission clarify the definition of "breeder." The Commission concurs with IRRC's suggested language and has implemented the changes accordingly. Additionally, IRRC questioned how the Commission arrived at the 90-day period in the definition of "Pennsylvania-bred horse" and specifically, whether the 90-day period is a sufficient limitation to assure that a foal qualifies as a Pennsylvania-bred horse. After consultation with the Pennsylvania Breeding Fund Advisory Board and the Pennsylvania Horse Breeders Association (PHBA), the Commission concluded that 90 days would be a reasonable compromise period. The Commission believed that a period less than 90 days might not ensure a substantial contribution to this Commonwealth's commerce. Likewise, the Commission believed that a period more than 90 days might become too onerous on the Fund program participants.

As previously explained, the Commission's existing regulations simply require that the horse be foaled in this Commonwealth to qualify for the Breeders Fund Program and the program's entitlements. Due to the monetary success of the program, out-of-State breeders have been quick to take advantage of the overly broad definition of a Pennsylvania-bred without contributing to this Commonwealth's thoroughbred industry. The Commission believes the amendment will modify the current trend and help ensure the continued success of the Breeders Fund Program.

Senator Robert J. Thompson and IRRC questioned how the PHBA, which is responsible for the registration and records for Pennsylvania-bred horses, will determine that owners and breeders have met the conditions of the 90-day period. The breeder or an authorized agent, or both, is solely responsible for submitting information regarding the foal and all pertinent information regarding the 90-day period by way of an application/affidavit. The breeder or the breeder's agent shall specifically provide and attest to information regarding the farm at which the mare or foal domiciled for at least 90 days during the calendar year of foaling. The application/affidavit makes clear the consequences to the breeders or his agent if the information provided is fraudulent. This form has been approved by the Commission.

Senator Thompson and IRRC also suggested the Commission incorporate the eligibility requirements which shall be met by the breeders into the regulations. The Commission is not inclined to do so. The Commission believes the foal application/affidavit clearly and adequately explains the requirements for registration as a Pennsylvania-bred: 1) The horse must foaled in this Commonwealth; and 2) The foal or dam must spend a minimum of 90 days at a facility in this Commonwealth. These requirements only affect those individuals who wish to voluntarily participate in the Breeders Fund Program. Accordingly, the Commission does not believe it

is necessary to add further regulation or add the application/affidavit to the existing regulations.

Section 165.118(j). Trifecta.

IRRC suggested that, for purposes of clarity, the Commission delete its proposed language and simply add a cross reference to § 163.95 (relating to coupled entries) which would clarify what horse would have to run as a coupled entry. The Commission agrees with IRRC's suggested changes and has implemented them accordingly.

Fiscal Impact

Commonwealth

The Commission has determined that the amendments will have no adverse fiscal impact on the Commonwealth.

Political Subdivisions

The amendments will not have any direct fiscal impact on political subdivisions.

Private Sector

The amendments will not have any negative fiscal impact on the private sector within this Commonwealth. There may be limited fiscal impact upon out-of-State breeders who enter this Commonwealth to become eligible for the Breeders' Fund Program. This impact should be offset as a result of the commerce generated with the new 90-day requirement for the dam and foal, which will have to be met to qualify for the Pennsylvania-bred registration.

General Public

The amendments will not have any fiscal impact on the general public. The amendments will, however, bring the Commission's regulations relating to coupled entries into conformity with the other surrounding racing jurisdictions.

Paperwork Requirements

The amendments will not generate any new substantial paperwork for the public or the Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 14, 1998, the Commission submitted a copy of the notice of proposed rulemaking published at 28 Pa.B. 4797 to IRRC and to the Chairpersons of the House and Senate Standing Committees on State Government for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of all comments received.

In preparing these final-form regulations, the Commission has considered all comments received from IRRC, the Committees and the public. These final-form regulations were approved by the Committees on August 10, 1999, and were approved by IRRC on August 19, 1999, in accordance with section 5(c) of the Regulatory Review Act.

Contact Person

Further information is available by contacting the State Horse Racing Commission, Room 304, Agriculture Building, 2301 N. Cameron Street, Harrisburg, PA 17110-9408, Attention: Benjamin H. Nolt, Jr., Executive Secretary, (717) 787-1942.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments encompassed by this order has been given under section 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240)(45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and that all comments received were considered.

(3) The adoption of the amendments in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 163 and 165, are amended by amending §§ 163.95, 163.531, 163.532, and 165.118 and deleting §§ 163.533, 163.534 and 163.537 to read as set forth in Annex A.

(b) The Commission shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall be effective upon publication in the *Pennsylvania Bulletin*.

BENJAMIN H. NOLT, Jr.,
Executive Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 4749 (September 4, 1999).)

Fiscal Note: Fiscal Note 34-63 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 58. RECREATION****PART IV. HORSE RACING COMMISSION****CHAPTER 163. RULES OF RACING****ENTRIES AND SUBSCRIPTIONS****§ 163.95. Coupled entries.**

(a) The term "entry" means a horse made eligible to run in a race. When starters in a race include two or more horses owned by the same person, they shall be coupled as an entry, with no exceptions. A wager on one horse in the entry shall be a wager on all horses in the entry. If a race is split in two or more divisions, horses in an entry shall be seeded in separate divisions, but the divisions in which they compete and their post positions shall be drawn by lot.

(b) Horses owned wholly or in part by the same trainer, person or the spouse of the person shall be coupled and run as an entry.

(c) If one horse is scratched after the betting is under way, the remaining horse shall run as a betting entry.

(d) Starters in a race which include two horses of different ownership trained by the same person, trained in the same stable or trained by the same management may not be coupled as an entry and shall constitute

separate wagering interests. In no case may more than two horses having common trainer ties as defined in this section start in a race.

PENNSYLVANIA BREEDERS' FUND PROGRAM**§ 163.531. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Breeder—A breeder is the owner of the dam at the time of foaling. When a horse is held under a lease or partnership registered with the jockey club, the lease or partnership will be deemed to be the owner.

Pennsylvania-bred horse—A Pennsylvania-bred horse is a thoroughbred horse foaled in this Commonwealth, which during the year of foaling, the foal or its dam spent a minimum of 90 days at a facility in this Commonwealth and is subsequently registered with the Pennsylvania Horse Breeders Association and the Jockey Club.

Pennsylvania sire—A Pennsylvania sire is a thoroughbred stallion that regularly stands for a breeding season in this Commonwealth and is registered with the Pennsylvania Horse Breeders Association.

§ 163.532. Eligibility for Pennsylvania-bred races.

To be eligible for preferences in races in which registered Pennsylvania-breds are preferred and to be eligible for entry in races which are restricted by condition to registered Pennsylvania-breds, a horse shall be registered as a Pennsylvania-bred with the Pennsylvania Horse Breeders Association at the time of entry.

§ 163.533. (Reserved).**§ 163.534. (Reserved).****§ 163.537. (Reserved).****CHAPTER 165. ADMINISTRATIVE RULES****Subchapter E. PARI-MUTUEL WAGERING****§ 165.118. Trifecta.**

(a) No trifecta wagering may be conducted without permission of the Commission. The only races in which "trifecta" type pari-mutuel wagering is permitted, are those races designated by the Commission and a separate pool is established therefor.

(b) The trifecta is a form of pari-mutuel wagering in a single race in which the bettor selects a ticket combining in exact finishing order, as officially posted the first, second and third place winner.

(c) Trifecta tickets shall be sold only at trifecta windows by the licensee.

(d) The trifecta is not a parlay and except as set forth in this section, has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(e) Trifecta tickets shall be sold in at least \$2 denominations or in such denominations as from time to time are approved by the Commission.

(f) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finishers in that order. If no ticket is sold combining the win and place finish, the net pool will be distributed to the holders of tickets selecting the winner. If less than three horses finish, the payoff will be made to holders of tickets selecting the finishing horses in order, ignoring the balance of the selection.

(g) If no ticket is sold that would require distribution of the trifecta pool to a winner defined in this section, the licensee shall make a complete and full refund of the Trifecta Pool.

(h) In the event of a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets. The payoff will be calculated as a place pool by dividing the net trifecta pool by the total purchase price of winning tickets.

(i) In the event of a scratch in the trifecta no exchanges will be made. All tickets which include the scratched horse are eliminated from further participation in the trifecta pool and will be refunded.

(j) Coupled entries and fields are allowed in trifecta races as set forth in § 163.95 (relating to coupled entries).

(k) Trifecta tickets shall be sold only by the licensee through pari-mutuel machines programmed to print all selections on one ticket. Resale of these tickets from one individual to another is prohibited and shall be grounds for ejection.

(l) Each association shall print in heavy type in a conspicuous place in its daily printed program all the provisions of this section and post printed copies of this section about the track in places as it deems available.

[Pa.B. Doc. No. 99-1665. Filed for public inspection October 1, 1999, 9:00 a.m.]
