

# **RULES AND REGULATIONS**

## **Title 7—AGRICULTURE**

### **DEPARTMENT OF AGRICULTURE**

#### **7 PA CODE CHAPTER 46**

### **Food Code**

### **Food Employee Certification**



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### **Food Code; Food Employee Certification**

#### **Subchapter A. PURPOSE; DEFINITIONS; ADOPTION OF MODEL FOOD CODE**

##### **§ 46.2. Scope.**

This chapter establishes definitions; sets standards for management and personnel, food operations and equipment and facilities; and provides for retail food facility plan review, licensing, inspection and employee restriction.

##### **§ 46.3. Definitions.**

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

*Bed and breakfast homestead or inn*—A private residence which contains ten or fewer bedrooms used for providing overnight accommodations to the public, and in which breakfast is the only meal served and is included in the charge for the room.

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

*Department*—The Department of Agriculture of the Commonwealth. The term is synonymous with the term "regulatory authority" in Subpart 1-201 of the Model Food Code, regarding applicability and terms defined.

*Drinking water, potable water or water*—Safe drinking water as defined in the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17). The term does not include water such as boiler water, mop water, rainwater, wastewater and "nondrinking" water.

*Employee*—The license holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement or other person working in a retail food facility.

*Food*—An article used for food or drink by humans, including chewing gum and articles used for components of any article. The term does not include medicines and drugs.

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

*Food establishment*—

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

(ii) The term excludes retail food facilities, retail food establishments, public eating and drinking places, and those portions of establishments operating exclusively under milk or milk products permits.

(iii) The term is synonymous with the term "food processing plant" in Subpart 1-201 of the Model Food Code.

*Food Safety Act*—3 Pa.C.S. §§ 5721—5737 (relating to Food Safety Act).

*HACCP—Hazard Analysis Critical Control Point*—A system developed by the National Advisory Committee on Microbiological Criteria for Foods that identifies and monitors specific foodborne hazards that can adversely affect the safety of the food products.

*License*—A grant to a proprietor to operate a retail food facility. The term is synonymous with the term "permit" in Subpart 1-201 of the Model Food Code.

*Licensee*—The person, (such as a retail food facility operator), who is directly responsible for the operation of a retail food facility and holds a current license. The term is synonymous with the term "permit holder" in Subpart 1-201 of the Model Food Code.

*Licensor*—The term includes the following:

(i) The county department of health or joint-county department of health, whenever the retail food facility is located in a political subdivision which is under the jurisdiction of a county department of health or joint-county department of health.

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

(iii) The health authorities of second class townships and second class townships which have adopted a home rule charter which elect to issue licenses under the Retail Food Facility Safety Act whenever a retail food facility is located in a second class township or second class township which has adopted a home rule charter not under the jurisdiction of a county department of health or joint-county department of health.

(iv) The Department, whenever the retail food facility is located in any other area of this Commonwealth.

*Milk Sanitation Law*—The act of July 2, 1935 (P. L. 589, No. 210) (31 P. S. §§ 645—660g).

*Model Food Code*—The most current edition of the Food Code published by the Department of Health and Human Services, Food and Drug Administration.

*Organized camp*—A combination of programs and facilities established for the primary purpose of providing an outdoor group living experience for children, youth and adults with social, recreational and educational objectives that is operated and used for 5 consecutive days or more during one or more seasons of the year.

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

*Proprietor*—A person, partnership, association or corporation conducting or operating a retail food facility in this Commonwealth. The term is synonymous with the term "person" in Subpart 1-201 of the Model Food Code.

*Public eating or drinking place*—A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

*Raw agricultural commodity*—A food in its raw or natural state, including fruits which are washed, colored or otherwise treated in their unpeeled, natural form prior to marketing.

*Retail food establishment*—

(i) An establishment which stores, prepares, packages, vends, offers for sale or otherwise provides food for human consumption and which relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or delivery service provided by common carriers.

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

*Retail food facility*—A public eating or drinking place or a retail food establishment. The term is synonymous with the term "food establishment" in Subpart 1-201 of the Model Food Code.

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

*Retail Food Facility Safety Act*—3 Pa.C.S. §§ 5701—5714 (relating to Retail Food Facility Safety Act).

*Secretary*—The Secretary of the Department or an authorized representative, employee or agent of the Department.

#### **§ 46.4. Adoption of Model Food Code.**

The provisions, terms, procedures, appendices and standards in the current edition of the Model Food Code are adopted to the extent they do not conflict with one or more of the following:

- (1) The Retail Food Facility Safety Act.
- (2) The Food Safety Act.
- (3) This chapter.

**Subchapter B. (Reserved)**

## Subchapter C. FOOD

### FOOD SOURCES

#### § 46.212. Food prepared in a private home.

(a) *General.* Food prepared in a private home may not be used or offered for human consumption in a retail food facility unless the private home meets the requirements of subsection (b) or (c).

(b) *Private home that is a registered food establishment.* Food prepared in a private home may be used or offered for human consumption in a retail food facility if the private home from which the food originates is registered with the Department as a food establishment under the Food Safety Act.

(c) *Private home that is exempt from licensure or inspection under the Retail Food Facility Safety Act.* Food prepared in a private home may be used or offered for human consumption in a retail food facility if the following apply:

- (1) The food is not potentially hazardous food.
- (2) The food is used or offered for human consumption by any of the following organizations:
  - (i) A tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)).
  - (ii) A volunteer fire company or ambulance, religious, charitable, fraternal, veterans, civic, sportsmen, agricultural fair or agricultural association, or a separately chartered auxiliary of an association on a nonprofit basis.
  - (iii) An organization that is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a nonprofit basis.
- (3) The organization that uses or offers the food for human consumption informs consumers that the organization uses or offers food that has been prepared in private homes that are not licensed or inspected.
  - (i) Acceptable means of providing written notice include providing that notice on a menu, a menu board, separate signage posted in a location that is conspicuous for consumers to view or on individual food product labels.

(ii) The written notice must clearly communicate that the food has been prepared in a private home that is not licensed or inspected. Phrases such as "These baked goods originate from private homes that are not government-licensed or government-inspected," "The food offered on this table comes from private homes that are not licensed or inspected" and "Food offered in this bake sale has been prepared in private homes that are not licensed or inspected" meet this requirement. Persons may submit proposed written notice language to the Department or other licensor, as applicable, for review.

(4) The food is donated to an organization described under paragraph (2).

**§ 46.217. Milk and milk products.**

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

**Subchapter D. (Reserved)**

**Subchapter E. (Reserved)**

**Subchapter F. (Reserved)**

**Subchapter G. (Reserved)**

## **Subchapter H. ADMINISTRATIVE PROCEDURES**

### **ACCESS, APPROVALS AND VARIANCES**

#### **§ 46.1101. Access to retail food facilities.**

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

#### **§ 46.1102. Obtaining Department or licensor approval.**

(a) *General.* This section describes the process by which a person may obtain an approval from the Department or a licensor required by another provision of this chapter.

(b) *Written request.* A person seeking an approval from the Department or a licensor under this chapter shall submit a written request for approval to the entity from which approval is sought. If approval is sought from the Department, the written request shall be mailed or delivered to the following address:

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

(c) *Contents of request.* The written request for approval described in subsection (b) must specify the provision of this chapter under which approval is sought, the reason approval is sought and relevant documentation in support of the request.

(d) *Processing a request.* The Department or licensor will, within 30 days of receipt of a written request for approval under this section, mail or otherwise provide the requester with a written grant or denial of the request, or a specific request for additional information. If a written request for additional information is made, the Department or licensor will have an additional 30 days from the date it receives the additional information within which to mail or otherwise provide the requester with a written grant or denial of the request.

(e) *Standard for approval.* The Department or licensor will grant approval if it determines the approval would not constitute or cause a violation of the Retail Food Facility Safety Act or this chapter, and that no health hazard would result from the approval.

### **§ 46.1103. Variances.**

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

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

(1) A statement of the proposed variance of the chapter requirement citing relevant chapter section numbers.

(2) An analysis of the rationale for how the potential public health hazards addressed by the relevant chapter sections will be alternatively addressed by the proposal.

(3) An HACCP plan—if required as specified in § 46.1122(a)(1) (relating to HACCP plans)—that includes the information specified in § 46.1122(b) as it is relevant to the variance requested.

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

(1) Comply with the HACCP plans and procedures that are submitted as specified in § 46.1122(b) and approved as a basis for the modification or waiver.

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

(i) Procedures for monitoring critical control points.

(ii) Monitoring of the critical control points.

- (iii) Verification of the effectiveness of an operation or process.
- (iv) Necessary corrective actions if there is failure at a critical control point.

## **PLAN SUBMISSION AND APPROVAL**

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

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

- (1) The construction of a retail food facility.
- (2) The conversion of an existing structure for use as a retail food facility.
- (3) The remodeling of a retail food facility (including installation and use of any new major food equipment for heating, cooling, and hot and cold holding food) or a change of type of retail food facility or food operation if the Department or licensor determines that plans and specifications are necessary to ensure compliance with this chapter.
- (4) A change of ownership of a retail food facility.

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

- (1) Intended menu and consumer advisory intentions, if a consumer advisory is required under Subpart 3-603 of the Model Food Code, regarding consumer advisory, for animal foods that are raw, undercooked or not otherwise processed to eliminate pathogens.
- (2) Anticipated volume of food to be stored, prepared and sold or served.
- (3) Proposed layout, mechanical schematics, construction materials and finish schedules.

(4) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities and installation specifications.

(5) Source of water supply, means of sewage disposal and refuse disposal.

(6) An HACCP plan, if required under § 46.1122 (relating to HACCP plans).

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

### **§ 46.1122. HACCP plans.**

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

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

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

(ii) A variance is required as specified in Subpart 8-201 of the Model Food Code, regarding facility and operating plans.

(iii) The Department or licenser determines that a food preparation or processing method requires a variance based on a plan submittal specified in § 46.1121(b) (relating to facility and operating plans), an inspectional finding or a variance request.

(2) A retail food facility applicant or retail food facility operator shall have a properly prepared HACCP plan as specified in Subpart 3-502 of the Model Food Code, regarding specialized processing methods, for reduced oxygen packaging.

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

(1) A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the Department or licensor.

(2) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

(i) Ingredients, materials and equipment used in the preparation of that food.

(ii) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.

(3) Food employee and supervisory training plan that addresses the food safety issues of concern.

(4) A statement of standard operating procedures for the plan under consideration including clearly identifying the following:

(i) Each critical control point.

(ii) The critical limits for each critical control point.

(iii) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge.

(iv) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points.

(v) Action to be taken by the person in charge if the critical limits for each critical control point are not met.

(vi) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed.

(5) Additional scientific data or other information, as required by the Department or licensor, supporting the determination that food safety is not compromised by the proposal.

### **§ 46.1123. Confidentiality of trade secrets.**

The Department or licensor will treat as confidential information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in §§ 46.1121(b) and 46.1122(b) (relating to facility and operating plans; and HACCP plans).

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

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

## **REQUIREMENTS FOR OPERATION**

### **§ 46.1141. License requirement.**

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

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

- (1) A retail food facility in which only prepackaged, nonpotentially hazardous food or beverages are sold.
- (2) A retail food facility that sells only raw agricultural commodities.
- (3) A retail food facility that is exempt from licensure by an order of the Secretary that has been published in the *Pennsylvania Bulletin* in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act (relating to license required) if the licensor is the Department.
- (4) A retail food facility that is exempt from licensure by an order of the local government unit or units having licensing authority in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act if the licensor is an entity other than the Department.

(c) *License interval.* A license certificate issued by the Department under this chapter sets forth the license expiration date. The license interval varies, in

accordance with the risk-based factors identified in Subpart 8-401 of the Model Food Code, regarding frequency, and Annex 5 of the Model Food Code, regarding conducting risk-based inspections, as follows:

(1) *24-month license interval.*

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

(A) Serves or sells only prepackaged, nonpotentially hazardous foods (nontime/temperature control for safety foods).

(B) Prepares only nonpotentially hazardous foods (nontime/temperature control for safety foods).

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

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

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

(iii) The license interval for a retail food facility is 24 months if the retail food facility would otherwise be subject to the 18-month license interval in paragraph (2) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors identified in Subpart 8-401 of the Model Food Code. These risk factors include:

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

(B) Specialized processes conducted.

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

(D) Large numbers of people served.

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

(F) Highly susceptible population served.

(iv) Active managerial control is achieved and documented when the conditions in subsection (d) are achieved by the licensee.

(2) *18-month license interval.*

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

(A) Has a limited menu.

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

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

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

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

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

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

documented active managerial control of the foodborne illness risk factors in paragraph (1). Active managerial control is achieved and documented when the conditions in subsection (d) are achieved by the licensee.

(3) *12-month license interval.*

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

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

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

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

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

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

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

(4) *6-month license interval.*

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

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

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

(d) *Achieving and documenting active managerial control.* Active managerial control is achieved and documented when all of the following conditions are met:

(1) The previous three inspections of the retail food facility, conducted at the appropriate risk-based licensing inspection interval as described in subsection (c), document through the licensee's inspection reports that:

(i) The retail food facility was in overall compliance.

(ii) There have not been repeats of previously-identified risk-factor violations among those three inspection reports.

(iii) If an HACCP plan is required under § 46.1122 (relating to HACCP plans), there have not been violations of that HACCP plan.

(2) Within the previous three inspections of the retail food facility, conducted at the appropriate risk-based licensing inspection interval as described in subsection (c), there have been no founded consumer complaints regarding food safety.

(3) Within the previous three inspections of the retail food facility, conducted at the appropriate risk-based licensing inspection interval as

described in subsection (c), there have been no reported and confirmed incidents of foodborne illness associated with the facility.

(4) The retail food facility is in compliance with the Food Employee Certification Act.

(5) The retail food facility has written procedures that, at a minimum, address all risk factors if the facility does one or more of the following:

(i) Serves large numbers of people or prepares food a day in advance, or both, such as a retail food facility at a sports stadium, entertainment complex, conference center, banquet hall or offsite catering facility.

(ii) Serves transient groups of people such as a mobile retail food facility or temporary food facility at a fair or event.

(iii) Serves consumers which are a highly susceptible population, such as a preschool, nursing home or hospital.

#### **§ 46.1142. Application procedure for appropriate license.**

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

#### **§ 46.1143. Issuance.**

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

(1) The required plans, specifications and information are reviewed and approved.

(2) A preoperational inspection, as described in § 46.1124 (relating to preoperational inspection of construction), shows that the facility is built or remodeled in accordance with the approved plans and specifications and that the facility is in compliance with this chapter.

(3) A properly completed application is submitted.

(4) The required fee is submitted.

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

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

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

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

- (1) Post the license in a location in the retail food facility that is conspicuous to consumers and the Department or licensor.
- (2) Comply with this chapter—including the conditions of a granted variance as specified in § 46.1103(c) (relating to variances)—and approved plans as specified in § 46.1121(b) (relating to facility and operating plans).
- (3) If a retail food facility is required in § 46.1122(a) (relating to HACCP plans) to operate under an HACCP plan, comply with the plan as specified in § 46.1103(c).
- (4) Immediately contact the Department or licensor to report an illness of a food employee as specified in Subpart 2-201 of the Model Food Code, regarding responsibilities of permit holder, person in charge, food employees, and conditional employees.
- (5) Immediately discontinue operations and notify the Department or licensor if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health. A retail food facility operator does not need to discontinue operations in an area of a facility that is unaffected by the imminent health hazard.
- (6) Not resume operations discontinued in accordance with paragraph (5) or otherwise according to the Retail Food Facility Safety Act until approval is obtained from the Department or licensor.

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

(8) Except as specified in paragraph (9), replace existing facilities and equipment with facilities and equipment that comply with this chapter if either of the following occurs:

(i) The Department or licensor directs the replacement because the facilities and equipment constitute a public health hazard or no longer comply with the criteria upon which the facilities and equipment were accepted.

(ii) The facilities and equipment are replaced in the normal course of operation.

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

(10) Accept notices issued and served by the Department or licensor according to the Retail Food Facility Safety Act.

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

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

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

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

## **Subchapter I. FOOD EMPLOYEE CERTIFICATION ACT COMPLIANCE**

### **§ 46.1201. Food Employee Certification Act compliance.**

(a) *Statutory requirement.* The Food Employee Certification Act requires that a retail food facility have at least one employee who holds a valid certificate present at the retail food facility or immediately accessible at all hours of operation and who is the person in charge of the retail food facility when physically present and on duty.

(b) *General recognition of certification programs.* For purposes of compliance with the Food Employee Certification Act, the Department recognizes certification programs, including examinations developed under those programs, that are evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program. A certificate of completion of a program is a "certificate" for purposes of the requirement in subsection (a) and is adequate proof of compliance.

(c) *Posting of certificate.* A retail food facility shall post the original certificate of its certified employee in public view at its business location.

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

- (1) Publish the current list in the *Pennsylvania Bulletin* annually and when the list is revised.
- (2) Post the current list on the Department's web site at [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us).
- (3) Provide a copy of the current list upon request directed to the Department's Bureau of Food Safety and Laboratory Services at (717) 787-4315 or the following mailing address:

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