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CHAPTER 57  
FOOD PROTECTION

- Subchapter  
A. Retail Food Facility Safety  
B. Food Safety

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SUBCHAPTER A  
RETAIL FOOD FACILITY SAFETY

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§ 5701. Short title of chapter.

This chapter shall be known and may be cited as the Retail Food Facility Safety Act.

§ 5702. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section 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.

"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 employee." An individual working with unpackaged food, food equipment or utensils or food contact surfaces.

"License." A grant to a proprietor to operate a retail food facility.

"Licensor." Any of the following:

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

(2) The health authorities of cities, boroughs, incorporated towns and first class townships whenever a 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.

(3) The health authorities of second class townships and second class townships which have adopted a home rule charter which elect to issue licenses under this subchapter

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.

(4) The Department of Agriculture whenever a retail food facility is located in any other area of this Commonwealth.

"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, and operated and used for five or more consecutive days 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.

"Potentially hazardous food." The term shall have the same meaning as defined in the 2009 edition of the Food Code published by the Department of Health and Human Services, Food and Drug Administration or any successor document approved by regulation of the department.

"Proprietor." A person, partnership, association or corporation conducting or operating a retail food facility within this Commonwealth.

"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." As defined under section 5722 (relating to definitions).

"Retail food establishment." 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. 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.

§ 5703. License required.

(a) Unlawful conduct. Except as provided in subsection (b), it shall be unlawful for any proprietor to conduct or operate a retail food facility without first obtaining a license for each retail food facility as provided in this subchapter.

(b) Exempt retail food facilities.

(1) A licensor may exempt the following retail food facilities from the license requirements of this section:

(i) A food bank owned by a charitable nonprofit entity and operated for charitable or religious purposes.

(ii) A soup kitchen owned by a charitable nonprofit entity and operated for charitable or religious purposes.

(iii) A retail food facility that operates on no more than three days each calendar year.

(iv) A school cafeteria.

(v) A retail food facility that is owned by a charitable nonprofit entity and that is one or more of the following:

(A) Managed by an organization which is established to promote and encourage participation or support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems

on a not-for-profit basis. This subparagraph does not apply to organized camps.

(B) Offers only foods that are nonpotentially hazardous foods or beverages.

(vi) A retail food facility in which food or beverages are sold only through a vending machine.

(vii) A retail food facility which is owned by a church, association of churches or other religious order, body or institution which:

(a) Qualifies for exemption from taxation under Section 501(c)(3) or (d) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501).

(b) Is not subject to unrelated business income taxation under Sections 511, 512 or 513 of the Internal Revenue Code of 1986 for activities undertaken under this chapter.

If the licensor is the department, the exemption shall be accomplished by order of the secretary and published in the Pennsylvania Bulletin. If the licensor is an entity other than the department, the exemption shall be accomplished by order of the local government unit or units having jurisdiction over the licensor. A retail food facility that is exempted from the license requirements under this section shall remain subject to inspection and all other provisions of this subchapter.

(2) A licensor shall exempt the following retail food facilities from the license requirements of this section:

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

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

A retail food facility that is exempted from the license requirements under this section shall remain subject to inspection and all other provisions of this subchapter.

(c) Issuance of license. A retail food facility license shall be issued by the licensor having jurisdiction. A license shall specify the date of expiration, the period for which the license is valid, the name of the licensee and the place licensed. Licenses shall be conspicuously displayed at all times in the place thereby licensed. Licenses shall not be transferable.

(d) Application requirement. Any person owning or operating or desiring to operate a retail food facility within this Commonwealth shall make application for a license to the licensor on forms furnished by the licensor. The forms shall, at a minimum, set forth such information as the department may require and any additional information a licensor that is not the department may require under the authority of the Act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act, or the Act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law. Application forms shall include the name and address of the applicant, together with all the other information deemed necessary to identify the applicant, provide contact information for the applicant, identify the location of the retail food facility that is the subject to the application and facilitate the licensor's processing of the application.

(e) Inspection.

(1) No license shall be issued until inspection of the retail food facility has been made by the licensor and the retail food facility meets the requirements of both this subchapter and one of the following:

(i) The rules and regulations of the department.

(ii) The rules and regulations adopted under the authority of the First Class City Home Rule Act or the Local Health Administration Law.

(2) Rules and regulations adopted by a licensor who is not the department shall meet and shall not exceed the requirements of this subchapter and the rules and regulations of the department.

(f) Reports.If the licensor is an entity other than the department, the licensor shall provide the department a copy of any inspection report resulting from any inspection conducted under authority of this subchapter within 30 days of the inspection date. This copy may be sent by electronic methods, as approved by the department. The department may, by regulation, require that inspection reports be submitted in a specific electronic format.

(g) Term of license.

(1) Except as provided in paragraph (2), licenses shall expire on the day after the original license anniversary date at intervals of one year, or for any other license period that is established by the department through regulation and that uses risk-based factors identified in the current edition of the Food Code, published by the United States Department of Health, Food and Drug Administration, as a basis for determining the appropriate license interval. An application for renewal shall be made one month before the expiration of an existing license. A license granted under the provisions of this subchapter shall be renewed if the most recent inspection by the licensor was conducted within the preceding license period and determined that requirements specified in this chapter with respect to the retail food facility were met.

(2) A temporary license for a retail food facility that operates on no more than 14 days in one calendar year or for a retail food facility operating at a fair, festival or similar temporary event shall be granted with respect to the calendar year in which it is issued if the retail food facility meets the requirements of this subchapter.

(h) Sales and use tax license.No license shall be issued until the proprietor exhibits proof that the proprietor has applied for or received a sales and use tax license or exemption certificate from the Department of Revenue.

(i) Denial or revocation of license.

(1) A licensor shall state in writing to the proprietor the reason for the refusal to issue a license.

(2) (i) If a retail food facility licensed by the department is in violation of a provision of this subchapter, or of a regulation promulgated under authority of this subchapter, or of any other act related to public health and being applicable to retail food facilities, the department may suspend or revoke the license. If a retail food facility licensed by an entity other than the department is in violation of a provision of this subchapter, or of a regulation promulgated under authority of this subchapter, or of any other act related to public health and being applicable to retail food facilities, or of the regulations of the licensor pertaining to retail food facilities, the licensor may suspend or revoke the license. The suspension of a license shall be terminated when the violation for which it was imposed has been found, upon inspection by the licensor, to have been corrected. Whenever a license is suspended or revoked, no part of the fee paid therefore shall be returned to the proprietor.

(ii) A licensor may, as an alternative to suspending or revoking a license, provide a licensee a reasonable interval within which to correct conditions that constitute a violation that would result in the suspension or revocation of the license, provided that the health and safety of the employees, occupants and patrons of the retail food facility can be reasonably assured during that interval.

(j) Fees.The fees that may be charged under this subchapter are as established by the licensor, if the licensor is an entity other than the department, and shall be paid into the city, borough, incorporated town, township or county treasury. If the licensor is the department, the fees shall be paid to the State Treasury through the department and are as follows:

(1) For licensure of a retail food facility that has not been previously licensed, and that is owner-operated and that has a seating capacity of less than 50: \$103.

(2) For licensure of a retail food facility that has not been previously licensed and

that is not described in paragraph (1): \$241.

(3) For a renewal of a license or for issuing a license to reflect a change of ownership: \$82.

(4) For a duplicate license, for each retail food facility location: \$14.

(5) For a temporary license under subsection (g)(2): \$14.

(6) For conducting a follow-up inspection to review whether changes have been made to correct violations which resulted in noncompliant status determined by a prior inspection:

(i) For the second follow-up inspection during the licensure period: \$150.

(ii) For a third or subsequent follow-up inspection during the licensure period: \$300.

(7) For conducting an inspection that is not otherwise required by the department, but that is conducted at the behest of the proprietor of the retail food facility: \$150.

(8) For any license described in paragraph (1), (2), (3), (4) or (5) that is issued for a period of greater than one year by regulation of the department in accordance with subsection (g), the license fee otherwise prescribed under those paragraphs shall be prorated for the license period.

(k) Multiple retail food facilities. Whenever any proprietor maintains more than one retail food facility within this Commonwealth, the proprietor shall be required to apply for and procure a license for each retail food facility.

§ 5704. Inspection, sampling and analysis.

(a) Inspection. For purposes of enforcement of this subchapter, a licensor is authorized, upon presenting appropriate credentials to the person in charge:

(1) To enter at reasonable times any retail food facility.

(2) To inspect at reasonable times, within reasonable limits and in a reasonable manner, the retail food facility.

(3) To obtain a sample of any food at a retail food facility for analysis as may be necessary to determine compliance with this subchapter if the licensor, upon completion of the inspection and prior to leaving the facility, provides the person in charge a receipt describing the sample obtained.

(b) Billing. A retail food facility from which a sample was collected may bill the licensor for the fair market value of the sample.

(c) Report. Upon completion of an inspection of a retail food facility and prior to leaving the premises, a licensor shall give to the person in charge a written report of the findings of the inspection. Results from the analysis of any samples taken shall be provided to the person in charge within 30 days of receipt.

§ 5705. (Reserved).

§ 5706. (Reserved).

§ 5707. Powers of department.

(a) Rules and regulations. The department shall make such reasonable rules and regulations as may be deemed necessary for carrying out the provisions and intent of this subchapter. In promulgating regulations, the department shall be guided by the most current edition of the Food Code, published by the United States Department of Health, Food and Drug Administration. The regulatory standards established by the department under this section shall be the standards followed and applied by any licensor with respect to retail food facilities.

(b) Food service at schools and organized camps.

(1) The department shall provide for the inspection of a food service at a school and for the training of school food service personnel in accordance with the standards applied to retail food facilities for schools located in areas in which the department is the licensor. Upon request, the department shall provide training to school food service personnel or

inspections of a food service at a school located in areas in which the department is not the licensor.

(2) The department shall provide for the inspection of a food service at organized camps and for the training of food service personnel at organized camps in accordance with the standards applied to retail food facilities for organized camps located in areas in which the department is the licensor. Upon request, the department shall provide training to organized camp food service personnel or inspections of a food service at organized camps located in areas in which the department is not the licensor.

(c) Inspection. If a licensor fails to inspect a retail food facility as required under Section 5703 (e) (relating to license required), the department shall have the authority to license and inspect all retail food facilities under that licensor's jurisdiction, and the licensor that failed to comply with the inspection requirement shall not charge or collect any fee for licensing subject retail food facilities. If the department conducts an inspection, it shall, within 30 days, provide the licensor a copy of the inspection report.

(d) Interagency coordination. The department shall provide inspection reports or test results that indicate human illness related to food consumption or food handling practices, or to other threats to the safety of the food supply, to the Department of Health, the Department of Environmental Protection or any other Commonwealth agency as necessary to develop a comprehensive, coordinated interagency approach to protecting public health and safeguarding the food supply.

§ 5708. Infectious persons.  
No proprietor shall allow any food employee to be in a retail food facility if that person has an infectious or communicable disease, as prohibited under the act of April 23, 1956 (1955 P.L. 1510, No. 500), known as the Disease Prevention and Control Law of 1955, and its attendant regulations related to restrictions on food handlers. In consultation with the Department of Health, the department may promulgate regulations with respect to specific illnesses as related to operations in a retail food facility as it deems necessary for the protection of public health.

§ 5709. Linens, equipment and utensils.  
No proprietor shall utilize any linens, equipment or utensils unless the linens, equipment or utensils have been thoroughly cleansed and sanitized in the manner prescribed by regulation of the department.

§ 5710. Retail food facility and employee cleanliness.  
All retail food facilities, kitchens, dining rooms and all places where foods are prepared, kept or stored shall be kept in a clean and sanitary condition and be protected from dust, dirt, insects and vermin in the manner prescribed by the regulations of the department. The clothing and hands of employees shall at all times be clean and sanitary. Except when washing fruits and vegetables or when approved by the department, food employees may not contact exposed, ready-to-eat food with their bare hands, and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment. No domestic pets or other animals shall be permitted where food or drink is prepared, handled or stored unless specifically permitted or required under the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or other Federal or State law. No person shall be permitted to use for living or sleeping purposes any room or place in any retail food facility which is regularly and customarily used for the preparation, handling, storing or serving of food.

§ 5711. Toilets, sinks and drains.  
All toilets, hand-wash sinks, tubs, sinks and drains used in or in connection with any retail food facility shall at all times be kept in a clean and sanitary condition.

§ 5712. Applicability.

This subchapter shall not apply to food that meets all of the following requirements:

- (1) The food is not potentially hazardous food.
- (2) The food is prepared in a private home.

(3) 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 (P.L. 99-514, 26 U.S.C. § 501(c)(3)).

(ii) A volunteer fire company or ambulance, religious, charitable, fraternal, veterans, civic, sportsmen, agricultural fair or agricultural association or any separately chartered auxiliary of any of these associations, on a not-for-profit 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 not-for-profit basis.

(4) 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.

(5) The food is donated to an organization described under paragraph (3).

§ 5713. School cafeterias and organized camps.

Officials of schools and organized camps shall cooperate with the department in the conduct of cafeteria health and safety inspections and shall participate in inspection services and training programs made available by the department in areas where the department is the licensor. Upon request, the department shall provide training to school or organized camp food service personnel or inspections of a food service at a school or organized camp located in areas in which the department is not the licensor.

§ 5714. Penalties.

(a) Retail food facilities under jurisdiction of department. For retail food facilities under the jurisdiction of the department, penalties are as follows:

(1) A person who violates any provision of this subchapter or any rule, regulation, standard or order made under this subchapter commits a summary offense for the first or second offense and shall be subject to a fine not less than \$100 but not more than \$300. A person who violates any provision of this subchapter or any rule, regulation, standard or order made under this subchapter commits a misdemeanor of the third degree if the violation is a third or subsequent offense and if the violation occurs within two years of the date of the last previous offense.

(2) In addition to proceeding under any other remedy available at law or in equity for a violation of this subchapter or a rule or regulation adopted or any order issued under this subchapter, the secretary may assess a civil penalty not to exceed \$10,000 upon an individual or business for each offense. No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing in accordance with law. In determining the amount of the penalty, the secretary shall consider the gravity of the violation. Whenever the secretary finds a violation which did not cause harm to human health, the secretary may issue a warning in lieu of assessing a penalty. In case of inability to collect the civil penalty or failure of any person to pay all or any portion of the penalty as the secretary may determine, the secretary may refer the matter to the Attorney General, who shall recover the amount by action in the appropriate court.

(b) Retail food facilities under other jurisdiction. Penalties shall be established by the licensor for retail food facilities under the jurisdiction of a licensor that is not the department.

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§ 5721. Short title of subchapter.

This subchapter shall be known and may be cited as the Food Safety Act.

§ 5722. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Color additive." A material which is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral or other source and when added or applied to a food is capable, alone or through reaction with other substances, of imparting color thereto. The term includes black, white and intermediate grays. The term does not include:

(1) Any material which the Secretary of Agriculture, by regulation, determines is used or intended to be used solely for a purpose or purposes other than coloring.

(2) Any pesticide chemical, soil or plant nutrient or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

"Federal acts." The Wholesome Meat Act (Public Law 90-201, 21 U.S.C. § 601 et seq.), the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), the Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et seq.), the Fair Packaging and Labeling Act (Public Law 89-755, 15 U.S.C. § 1451 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136 et seq.) and the Nutrition Labeling and Education Act of 1990 (Public Law 101-535, 104 Stat. 2353).

"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 additive." A substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food if the substance is not generally recognized among experts qualified by scientific training and expertise to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under



the conditions of its intended use. The term does not include the following:

- (1) A pesticide chemical in or on a raw agricultural commodity.
- (2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity.
- (3) A color additive.
- (4) Any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to a statute repealed by this act, pursuant to the Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et seq.) or pursuant to the Wholesome Meat Act (Public Law 90-201, 21 U.S.C. § 601 et seq.).
- (5) A new animal drug.

As used in this definition, the term "substance" includes any substance intended for use in producing, manufacturing, packaging, processing, preparing, treating, transporting or holding food and any source of radiation intended for any use.

"Food establishment." 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. 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.

"Imitation food." A food that is a substitute for and resembles another food but is nutritionally inferior to that food.

"Label." A display of written, printed or graphic matter upon the immediate container of any food. The term "immediate container" does not include package liners.

"Labeling." All labels and other written, printed or graphic matter upon a food or any of its containers or wrappings.

"Package." Any container or wrapping in which food is enclosed for delivery or display to retail purchasers. The term does not include the following:

- (1) Shipping containers or wrappings for the transportation of food in bulk or quantity to manufacturers, packers or processors or to wholesale or retail distributors.
- (2) Shipping containers or wrappings used by retailers to ship or deliver food to retail customers, if the containers or wrappings bear no printed matter pertaining to food.
- (3) Containers used for tray pack displays in retail establishments.
- (4) Transparent containers or wrappings which do not bear written, printed or graphic matter which obscures information required to be displayed on the label.

"Pesticide chemical." A substance used in the production, storage or transportation of raw agricultural commodities which, alone or in chemical combination or formulation with one or more other substances, is a pesticide within the meaning of the act of March 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide Control Act of 1973.

"Potentially hazardous food." As defined in Section 5702 (relating to definitions).

"Principal display panel." A part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale and is large enough to accommodate all the mandatory information required to be placed on the label.

"Public eating and drinking place." As defined in section 5702 (relating to definitions).

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

"Retail food establishment." As defined in section 5702 (relating to definitions).

"Retail food facility." As defined in section 5702 (relating to definitions).

"Secretary." Includes an authorized representative, employee or agent of the Department of Agriculture.

§ 5723. Prohibited acts.

The following acts are prohibited:

- (1) Manufacture, sale, delivery, consignment, bailment, holding or offering for sale of any food that is adulterated or misbranded, except where a person in good faith delivers or offers to deliver the food and furnishes shipping documents to the secretary.
- (2) Adulteration or misbranding of any food.
- (3) Knowingly receiving in commerce any food which is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise.
- (4) Sale, delivery for sale, holding for sale or offering for sale any article in violation of section 5731 (relating to poisonous or deleterious substances and tolerances).
- (5) Refusal to permit during normal business hours entry to, inspection of or taking of a sample or access to or copying of any record at a food establishment as authorized under section 5732(a)(2) and (3) (relating to inspection, sampling and analysis).
- (6) Removal or disposal of a detained or embargoed food article in violation of section 5726 (relating to detention and condemnation).
- (7) Alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of a food or the doing of any other act with respect to a food, if the act is done while the food is held for sale and results in the food being adulterated or misbranded.
- (8) Forging, counterfeiting, simulating, falsely representing or using without proper authority any mark, stamp, tag, label or other identification device authorized or required by regulation promulgated under this subchapter.
- (9) Use by any person to his own advantage or revealing, other than to the secretary or the courts when relevant in any judicial proceeding under this subchapter, of any information acquired under authority of this subchapter concerning any method or process which, as a trade secret or confidential trade information, is entitled to protection.
- (10) Holding of any potentially hazardous food at unsafe temperatures in violation of an applicable regulation issued under this chapter.
- (11) Failure to register with the department under the provisions of section 5734 (relating to registration of food establishments).
- (12) Use of wording which incorrectly indicates or implies that a label or product has received approval of the department. A food establishment may not claim registration either upon its label or package or otherwise, except as provided in section 5735 (relating to product registration).
- (13) Sale of confectionery containing alcohol at a level above one-half of 1% by volume.
- (14) Failure by a carrier to make records showing the movement in commerce of any food or the holding thereof during or after the movement and the quantity, shipper and consignee thereof available for one year after the initial date of movement of the food in commerce.

§ 5724. Temporary or permanent injunctions.

In addition to any other remedies provided in this subchapter, the secretary may apply to the Commonwealth Court or to any other court having jurisdiction for a temporary or permanent injunction restraining a person from violating this subchapter or any regulation adopted under this subchapter.

§ 5725. Penalties.

(a) Criminal penalties. A person who violates any provision of this subchapter or any rule, regulation, standard or order made under this subchapter commits a summary offense for the first

or second offense. A person who violates this subchapter or any rule, regulation, standard or order made under this subchapter commits a misdemeanor of the third degree if the violation is a third or subsequent offense and if the violation occurs within two years of the date of the last previous offense.

(b) Civil penalties. In addition to proceeding under any other remedy available at law or in equity for a violation of this subchapter, or a rule or regulation adopted or any order issued under this subchapter, the secretary may assess a civil penalty not to exceed \$10,000 upon an individual or business for each offense. No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing in accordance with law. In determining the amount of the penalty, the secretary shall consider the gravity of the violation. Whenever the secretary finds a violation which did not cause harm to human health, the secretary may issue a warning in lieu of assessing a penalty. In case of inability to collect the civil penalty or failure of any person to pay all or any portion of the penalty as the secretary may determine, the secretary may refer the matter to the Attorney General, who shall recover the amount by action in the appropriate court.

(c) Guaranty.

(1) No prosecution shall be sustained under the provisions of this subchapter for the manufacture, delivery, consignment, bailment, holding or sale of or offering for sale, exposing for sale or having in possession with intent to sell any adulterated or misbranded article against a person from whom the article of food, sample or portion was obtained by the department if the person can establish a guaranty to the effect that the article of food is not adulterated or misbranded within the meaning of this subchapter, was adulterated or misbranded prior to coming into the possession of the person and the person did not know or have reason to know of the adulteration or misbranding or was adulterated or misbranded after if left the possession and control of the person. The guaranty must be signed by the supplier, manufacturer, wholesale dealer, jobber or distributor from whom the articles of food were purchased or procured.

(2) The guaranty to afford protection shall contain the name and address of the supplier, manufacturer, wholesale dealer, jobber or distributor making the sale of the article of food to the person holding the guaranty. A supplier, manufacturer, wholesale dealer, jobber or distributor giving a guaranty under the provisions of this subchapter may be held responsible and may be proceeded against for the adulteration or misbranding of any article of food sold under the guaranty and shall be subject to the penalties provided for violation of this subchapter. A guaranty shall not operate as a defense to prosecution for a violation of the provisions of this subchapter if the person holding the guaranty continues to sell the same food after written or printed notice from the secretary that the article is adulterated or misbranded within the meaning of this subchapter. However, if the person violated the provisions of this subchapter by having stored, transported, exposed or kept the article in a way or manner to render it diseased, contaminated or unwholesome, the person may be proceeded against for a violation.

(d) Minor violations. Nothing in this subchapter shall be construed as requiring prosecution or institution of a proceeding under this subchapter for minor violations of this subchapter if the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

(e) Food establishments subject to local inspections. Penalties shall be established by the county, borough, incorporated town or township for food establishments that are subject to local inspection under section 5733(b) (relating to rules and regulations).

§ 5726. Detention and condemnation.

(a) Marking detained food. Whenever the secretary has probable cause to believe that food is adulterated or misbranded, the secretary shall affix to the container or wrapping a tag or other marking. The tag or marking shall give notice that:

(1) The food may be adulterated or misbranded and shall be detained.

(2) It is unlawful to remove the food from the food establishment or to dispose of it without approval of the secretary.

(b) Determination and appeal. The secretary shall determine whether a food detained under this subchapter may be sold, delivered, consigned, held or offered for sale as is or whether it shall be relabeled, reprocessed or destroyed within 40 days of issuance of the detention order. Any determination by the secretary that the food shall be relabeled, reprocessed or destroyed shall be subject, within 30 days of the determination, to appeal by the owner or operator of the food establishment or the manufacturer or owner of the food to the court of common pleas of the county in which the food was located. The detention order shall expire after five working days from the issuance of the order, unless the secretary confirms the order. The order shall clearly and concisely state the facts on which it is based.

(c) Relabeling. If the secretary determines that the adulteration or misbranding can be corrected by a proper label or reprocessing and the determination is not appealed within the time permitted, the secretary may direct that the food be released to the claimant to label or process under the supervision of the secretary. The relabeled or reprocessed food shall not be released into the market until the secretary has executed an order indicating that the food is no longer in violation of this subchapter.

(d) Order for destruction. Food detained under this subchapter shall be destroyed by the owner under the supervision of the secretary, if the secretary determines that the food is unfit for human consumption and the food cannot be reconditioned so as to be made fit for human consumption and the determination is not appealed within the time permitted. Food detained under this subchapter may be used as animal feed or for other beneficial use, provided that such use is in compliance with other applicable statutes, rules, regulations, standards and orders. The owner shall pay all costs of destruction.

§ 5727. Temporary permits.

Temporary permits granted by Federal agencies for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity in Federal acts shall be effective in this Commonwealth under the conditions provided in the permits. The secretary may issue intrastate permits where they are necessary to the completion of an investigation and where the interests of consumers are safeguarded for foods not complying with definitions, standards of identity and State laws and regulations. The permits shall be for a period not to exceed one year, although the permit may be extended for a period of up to one additional year if a new standard of identity has been applied for under section 5733 (relating to rules and regulations). The secretary may revoke a permit after notice to the affected party if the application contains misleading statements or if the secretary determines that unfair competitive advantage is gained through the issuance of the permit or that the need no longer exists for the permit.

§ 5728. Adulteration of food.

A food shall be deemed adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the food shall not be considered adulterated under this section if the quantity of the substance in the food does not ordinarily render it injurious to health.

(2) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 5731 (relating to poisonous or deleterious substances and tolerances). This paragraph does not apply to a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive.

(3) If it is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of section 5731, except that, where a pesticide chemical

has been used in or on a raw agricultural commodity with an exemption granted or tolerance prescribed under section 5731 or under any of the Federal acts and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide remaining in or on the processed food shall, notwithstanding the provisions of section 5731 and this paragraph, not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(4) If it bears or contains any food additive which is unsafe within the meaning of section 5731 or under any of the Federal acts.

(5) If it consists, in whole or in part, of any diseased, contaminated, filthy, putrid or decomposed substance or is otherwise unfit for food.

(6) If it has been produced, prepared, packed or held under unsanitary conditions so that it may have become contaminated with filth or may have been rendered diseased, unwholesome or injurious to health.

(7) If it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughtering.

(8) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health, unless the container is fabricated or manufactured with good manufacturing practice as that standard is defined and delineated by any of the Federal acts and their regulations.

(9) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect under section 5731 or under one of the Federal acts.

(10) If:

(i) any valuable constituent has been, in whole or in part, omitted or abstracted therefrom;

(ii) any substance has been substituted wholly or in part;

(iii) damage or inferiority has been concealed in any manner; or

(iv) any substance has been added thereto or mixed or packed so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is.

(11) If it bears or contains any color additive which is unsafe within the meaning of section 5731 or under one of the Federal acts.

(12) If it bears or contains eggs processed by or egg products derived from a manufacturing, processing or preparing method wherein whole eggs are broken using a centrifuge-type egg breaking machine that separates the egg's liquid interior from the shell.

§ 5729. Misbranding of food.

(a) General rule. A food shall be misbranded:

(1) If its labeling is false or misleading in any way.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food that is simulated.

(4) If its container is so made, formed or filled as to be misleading.

(5) If it is in a package that does not bear a label containing:

(i) The name and place of business of the manufacturer, packer or distributor.

(ii) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

Reasonable variations are permitted and exemptions as to small packages shall be established in regulations promulgated by the secretary.

(6) If it is represented as a food for which a definition and standard of identity has been prescribed by regulation under this subchapter or under any of the Federal acts, unless it conforms to the definition and standard and its label bears the name of the food specified in the definition and standard and the common names of optional ingredients, other than spices, flavoring and coloring, present in the food.

(7) Unless its label bears the following:

(i) The common or usual name of the food, if any.

(ii) If made from two or more ingredients, the common or usual name of each ingredient is listed in descending order of predominance by weight, except that spices, flavorings and colorings not required to be certified under any of the Federal acts, other than those sold as such, may be designated as spices, flavorings and colorings without naming each.

(8) If it is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as determined by regulation to be necessary and in order to inform purchasers as to its value for such use.

(9) If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact. Exemptions shall be established by regulations to the extent that compliance with requirements of this paragraph is impracticable. The provisions of this paragraph or paragraphs (6) and (7) with respect to artificial coloring shall not apply in the case of butter, cheese or ice cream. The provisions of this paragraph with respect to chemical preservatives shall not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil.

(10) If it is a raw agricultural commodity bearing or containing a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling which declares the presence of the chemical and the common or usual name and function of the chemical. A declaration shall not be required when the commodity is removed from the shipping container and is held or displayed for sale at retail in accordance with the custom of the trade.

(11) If it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to color additives in department regulations.

(12) If, at the site of purchase of the particular food, a sign, placard or other graphic matter relating to the food is false or misleading in any particular.

(b) Exceptions. The provisions of subsection (a)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) shall not apply to the following:

(1) Bakery goods sold at retail by the bakery directly to the consumer in a store or market stand operated by the bakery. The bakery goods must be made by the bakery, the bakery must guarantee that they are in compliance with this act in all other respects and the required information in subsection (a)(1), (2), (3), (4), (5), (6), (7), (8) and (9) must be available to the public at the point-of-sale.

(2) Bakery goods sold to the operators of retail food facilities when the required information in subsection (a)(1) (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) is available to the public on the premises of the retail food facility.

(c) Nonpackaged food. Food offered for retail sale in other than package form shall be accompanied by a sign, placard or notice listing the ingredients in descending order of predominance by weight.

§ 5730. Regulations to exempt certain labeling requirements.

The department shall promulgate regulations exempting from any labeling requirement food

which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed if the food is not adulterated or misbranded under this subchapter upon removal from the processing, labeling or repacking establishments.

§ 5731. Poisonous or deleterious substances and tolerances.

(a) Additions to food. A poisonous or deleterious substance added to a food, except where the substance is required in its production and cannot be avoided by good manufacturing practice, shall be deemed to be unsafe unless added in compliance with the Federal acts.

(b) Pesticide chemicals in or on raw agricultural commodities. A poisonous or deleterious pesticide chemical, or any chemical which is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity shall be deemed unsafe unless added in compliance with the Federal acts.

(c) Unsafe food additives. A food additive shall, with respect to any particular use or intended use, be deemed to be unsafe for the purposes of the application of section 5728(4) (relating to adulteration of food) unless it and its intended use conform to the terms of an exemption which is in effect under this section or unless there is in effect, and it and its intended use are in conformity with, a regulation issued under this section prescribing the conditions under which the additive may be safely used. A food which is in compliance with a regulation relating to a food additive shall not, by reason of bearing or containing an additive in accordance with the regulations, be considered adulterated within the meaning of section 5728(4).

§ 5732. Inspection, sampling and analysis.

(a) Inspection. For purposes of enforcement of this subchapter, the secretary is authorized, upon presenting appropriate credentials to the owner, operator or agent in charge:

(1) To enter at reasonable times any factory, warehouse or food establishment in which food is or was manufactured, processed, packed or held for introduction into commerce or to enter any vehicle used to transport or hold the food in commerce.

(2) To inspect at reasonable times, within reasonable limits and in a reasonable manner the factory, warehouse, food establishment or vehicle and all pertinent materials, containers and labeling and to obtain samples necessary to administer this subchapter.

(3) To have access to and to copy all records of carriers showing the movement in commerce of any food or the holding thereof during or after the movement, and the quantity, shipper and consignee thereof, if the secretary has probable cause to believe that the movement or holding of food is in violation of this subchapter or department regulations.

(b) Report of inspection. Upon completion of an inspection of a factory, warehouse or other food establishment and prior to leaving the premises, the secretary shall give to the owner, operator or agent in charge a written report of the findings of the inspection.

(b.1) Interagency coordination. The department shall share inspection reports or tests results that indicate human illness related to food consumption or food handling practices, or to other threats to the safety of the food supply, with the Department of Health, the Department of Environmental Protection or any other Commonwealth agency as necessary to develop a comprehensive, coordinated interagency approach to protecting public health and safeguarding the food supply.

(c) Collection of samples. During an inspection of a factory or other food establishment where food is manufactured, processed, packed, stored or offered for sale, the secretary may obtain a sample of any food for such analysis as is necessary to determine compliance with this subchapter.

(d) Receipt for samples. If the secretary has obtained any sample in the course of the inspection, the secretary shall, upon completion of the inspection and prior to leaving the premises, give to the owner, operator or agent in charge a receipt describing the sample obtained.

(e) Payment of samples. The food establishment from which samples are collected may bill the secretary for the fair market value of the samples.

§ 5733. Rules and regulations.

(a) Nature of rules. The secretary shall be charged with the enforcement of this subchapter and shall promulgate rules, regulations and food standards necessary for its proper enforcement. The rules, regulations and food standards shall conform and shall be construed to conform with the purposes expressed in section 5736 (relating to construction of subchapter).

(b) Local inspection. Nothing in this subchapter shall prohibit any county, city, borough, incorporated town or township which was licensing food establishments in accordance with the Act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act, or the Act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law, on September 2, 1994, from continuing to license such food establishments in accordance with the First Class City Home Rule Act or the Local Health Administration Law. No county, city, borough, incorporated town or township shall ordain or enforce requirements of any kind or description with respect to food establishments related to sanitation, food safety, inspections, standards and labeling other than those promulgated by the secretary in accordance with this subchapter or adopted in accordance with subsection (f).

(c) Reciprocal inspection. The secretary is authorized to enter into reciprocal agreements with other jurisdictions to ensure inhabitants of this Commonwealth that food sold in this Commonwealth complies with this subchapter and its regulations. The agreements may be for reciprocal inspection and labeling review. The secretary may approve or accept inspection and labeling requirements of other jurisdiction with respect to food.

(d) Uniform regulation. In reaching reciprocal agreements with other jurisdictions, the provisions of this subchapter and its regulations shall be considered as establishing uniform requirements and regulations for food establishments throughout this Commonwealth as defined in section 5722 (relating to definitions).

(e) Interagency agreements. Nothing in this subchapter shall prohibit a Commonwealth agency which is regulating and inspecting retail food facilities in accordance with Subchapter A (relating to retail food facility safety) from continuing to regulate and inspect retail food facilities in accordance with Subchapter A.

(f) Adoption of Federal regulations. All regulations and supplements thereto or revisions thereof adopted under the Federal acts which relate to food on, before or after the effective date of this subchapter are adopted as regulations in this Commonwealth and shall remain in effect unless subsequently modified or superseded by regulations promulgated by the secretary.

(g) Water standards. If a food establishment uses or supplies water for human consumption, the water shall be in compliance with the primary and secondary Maximum Contaminant Levels (MCL), treatment techniques and Maximum Residual Disinfectant Levels (MRDL) required by the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and its attendant regulations.

(h) Definitions. As used in this section, the phrase "other jurisdictions" shall mean the United States of America or any state, territory or possession thereof or any other country.

§ 5734. Registration of food establishments.

(a) General rule. Subject to the rules and regulations adopted by the secretary, it shall be the duty of every person operating a food establishment within this Commonwealth to register with the secretary as a food establishment. This registration requirement shall not be construed to exempt food establishments from licensing requirements of any county, city, borough, incorporated town or township in accordance with the Act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act, or the Act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law.

(b) Application. The application for registration shall be made on a form to be supplied by the



secretary upon request of the applicant.

(c) Fee. The registration fee shall be \$35 per food establishment per year.

(d) Exception. Vehicles used primarily for the transportation of any consumer commodity in bulk or quantity to manufacturers, packers, processors or wholesale or retail distributors are exempt from the provisions of this section.

(e) Single food establishment. For purposes of this section, food establishments which are located at the same address and operated by the same person shall be deemed to be a single food establishment.

§ 5735. Product registration.

The secretary may promulgate regulations allowing food establishments to label their food products as having been registered by the department. "Reg. Penna. Dept. Agr." shall be the approved abbreviation. This registration label shall be limited to food products prepared or packed in a food establishment registered under section 5734 (relating to registration of food establishments).

§ 5736. Construction of subchapter.

(a) General rule. The provisions of this subchapter and the regulations promulgated under this subchapter shall be construed in a manner that is consistent with the Federal acts and regulations promulgated under those acts. The secretary shall not ordain or enforce requirements relating to sanitation, food safety, food standards and labeling requirements of any kind or description other than those provided for in the Federal acts unless the proposed regulation meets all of the following:

- (1) is justified by compelling and unique local conditions;
- (2) protects an important public interest that would otherwise be unprotected;
- (3) relates to subject matter that is primarily local in nature and the Federal agency with responsibility over the subject matter is not exercising its jurisdiction with respect to the subject matter;
- (4) would not cause a food to be in violation of any applicable requirements under the Federal acts; and
- (5) would not unduly burden interstate commerce.

(b) Secretary to participate in rulemaking. The secretary is encouraged to participate in rulemaking under the Federal acts and, if necessary, to pursue Federal rulemaking as is deemed necessary for the protection of the citizens of this Commonwealth through the Federal petition and rulemaking process.

§ 5737. Acts not affected.

Nothing in this subchapter shall be construed to abrogate or supersede any provision or regulation adopted under:

- (1) The act of July 2, 1935 (P.L. 589, No. 210), referred to as the Milk Sanitation Law, the act of August 8, 1961 (P.L. 975, No. 436), referred to as the Milk Adulteration and Labeling Act, and the act of September 1, 1965 (P.L. 420, No. 215), known as The Frozen Dessert Law.
- (2) Subchapter A (relating to retail food facility safety).

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CHAPTER 65

FOOD EMPLOYEE CERTIFICATION

Sec.

6501. Short title of chapter.

6502. Definitions.

6503. Certification programs.

6504. Certification of employees.

6505. Rules and regulations.

6506. Repealed.

6507. Repealed.

6508. Civil penalties.

6509. Repealed.

6510. Exemptions.

§ 6501. Short title of chapter.

This chapter shall be known and may be cited as the Food Employee Certification Act.

§ 6502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

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

"Employee." As defined under section 5702 (relating to definitions).

"Food establishment." As defined in section 5722 (relating to definitions).

"Organized camp." As defined in section 5702 (relating to definitions).

"Person in charge." As defined in section 5702 (relating to definitions).

"Potentially hazardous food." As defined in section 5702 (relating to definitions).

"Proprietor." As defined in section 5702 (relating to definitions).

"Public eating or drinking place." A public eating or drinking place as defined in section 5702 (relating to definitions).

"Retail food establishment." As defined in section 5702 (relating to definitions).

"Retail food facility." A public eating or drinking place or a retail food establishment.

§ 6503. Certification programs.

(a) (Reserved).

(b) (Reserved).

(c) Certification programs.--The department shall recognize 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.

(c.1) (Reserved).

(d) Certification of employees.An employee shall be certified following demonstration of food safety protection knowledge by the successful completion of an examination conducted by or pursuant to an accredited certification program recognized by the department under subsection (c). A retail food facility shall have a period of three months after licensing under Ch. 57 Subch. A (relating to retail food facility safety) within which to comply with this chapter.

(e) Preemption.Except as provided in subsection (f), the regulation of food safety protection and training standards for employees of retail food facilities is preempted by the Commonwealth.

(f) Local programs.Any food employee certification program established by a county, city, borough, incorporated town or township prior to September 1, 1994, may remain in effect.

§ 6504. Certification of employees.

(a) General rule.--A retail food facility shall 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.

(a.1) Multiple retail food facilities.

(1) Except as provided under paragraph (2), a person who meets the requirements of subsection (a) may only be the required certified employee for a single retail food facility.

(2) If a proprietor operates more than one retail food facility at a temporary fair, festival or other temporary event, a person who meets the requirements of subsection (a) may be the certified employee for all of those temporary retail food establishments.

(a.2) Federal recommended standards.Notwithstanding this chapter, if, after the effective date of this subsection, the Food Code published by the United States Department of Health, Food and Drug Administration recommends that a person in charge hold a certificate or recommends that a certificate holder with supervisory authority be present during hours of operation at a retail food facility, the department shall, by regulation, establish this recommended standard as the standard for retail food facilities.

(b) (Reserved).

(c) Compliance.

(1) (Reserved).

(2) A retail food facility exempt under section 6510(d) (relating to exemptions) may voluntarily seek certification under this section.

(3) Except as provided in section 6510, compliance with this chapter by a retail food facility shall be mandatory.

(d) Employee turnover.--Retail food facilities which are not in compliance because of employee turnover or other loss of certified employees shall have three months from the date of loss of certified employees to comply.

(e) Maintenance and inspection of records.Names and certificate numbers of certified employees shall be maintained at the place of business and shall be made available to and shall be inspected by:

(1) The department for retail food facilities that are licensed under Subchapter A of

Chapter 57 (relating to retail food facility safety) by the department; or

- (2) The licenser for retail food facilities that are licensed under Subchapter A of Chapter 57 by a licenser that is not the department.

(f) Period of certification. Certification shall be in effect for the certification interval prescribed by the accredited certification program described in section 6503(c) (relating to certification programs). Renewal of certification shall be based on the successful completion of the certification requirements of an accredited certification program as described in section 6503(c).

(g) (Reserved).

(h) (Reserved).

§ 6505. Rules and regulations.

The department is charged with the administration of this chapter and shall promulgate rules, regulations and standards for its proper enforcement and administration.

§ 6508. Civil penalties.

(a) Retail food facilities licensed by the department. For retail food facilities licensed under Subchapter A of Chapter 57 (relating to retail food facility safety) by the department, and in addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted thereunder or any order issued pursuant thereto, the department may assess a civil penalty not to exceed \$300 for the first offense or not to exceed \$1,000 for subsequent offenses upon a person or retail food facility for each offense. No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing on the charge in accordance with law.

(b) Retail food facilities licensed by other licenser. For retail food facilities licensed under Subchapter A of Chapter 57 by a licenser that is not the department, penalties under this chapter shall be established by the licenser.

§ 6510. Exemptions.

(a) Prepackaged food.

- (1) Retail food facilities where only commercially prepackaged food is handled and sold are exempt from this chapter.

- (2) Retail food facilities that handle and sell food other than commercially prepackaged food are exempt from this chapter during time periods or work shifts when only commercially prepackaged food is sold.

(b) Nonpotentially hazardous food.

- (1) Retail food facilities that handle only nonpotentially hazardous food are exempt from this chapter.

- (2) Retail food facilities that handle and sell potentially hazardous food are exempt from this chapter during time periods or work shifts when only nonpotentially hazardous food is handled and sold.

(c) Food establishments. Food establishments are exempt from this chapter.

(d) Exempt retail food facilities. Except as set forth in section 6504(c)(2) (relating to certification of employees), the following retail food facilities are exempt from this chapter:

- (1) A retail food facility managed by an organization which is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

- (2) A retail food facility managed on a not-for-profit basis by an organization which is a volunteer fire company or an ambulance, religious, charitable, fraternal, veterans, civic, agricultural fair or agricultural association or any separately chartered auxiliary of any of the above associations.

- (3) A retail food facility managed by an organization which 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 not-for-profit

basis. This paragraph does not apply to organized camps.