

ALASKA STATE LEGISLATURE
JOINT COMMITTEE ON ADMINISTRATIVE REGULATION REVIEW

April 20, 2005

1:11 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Vice Chair
Senator Ben Stevens
Senator Lyman Hoffman

MEMBERS ABSENT

Representative Tom Anderson, Chair
Representative Vic Kohring
Representative Sharon Cissna

COMMITTEE CALENDAR

HEARING ON DEC PROPOSED CHANGES TO THE ALASKA FOOD CODES

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

KURT FREDRIKSSON, Acting Commissioner
Department of Environmental Conservation
Juneau, Alaska
POSITION STATEMENT: Reviewed the regulation process.

EARL HUBBARD, Vice President
Trident Seafoods
Seattle, Washington
POSITION STATEMENT: Stated that Trident Seafoods will request an exemption from these proposed regulations.

KENNY LUM, Vice President/Center Director
Food Products Association (FPA)
Center for Northwest Seafood
Seattle, Washington
POSITION STATEMENT: Requested an exemption for food service [mess hall/dining] operations of food processors permitted under 18 ACC 34.

JIM YONKER

Ocean Beauty Seafoods
Seattle, Washington

POSITION STATEMENT: Requested that the Alaska salmon industry/seafood industry be exempt from the regulations.

DOUG DONEGAN

Anchorage, Alaska

POSITION STATEMENT: Expressed concern that the proposed food code regulations shift the emphasis from on-site inspections to report review.

DALE FOX, Executive Director

Alaska Cabaret Hotel Restaurant & Retailer's Association

Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with the proposed food code regulations.

KAREN LYNCH, Food & Beverage Director

Cape Fox Lodge

Ketchikan, Alaska

POSITION STATEMENT: Expressed concern that the proposed food code regulations go overboard.

MEGHAN POPELY, General Manager

WestCoast Cape Fox Lodge

Ketchikan, Alaska

POSITION STATEMENT: Expressed concerns with the proposed food code regulations.

TIM FRANK, Executive Chef

WestCoast Cape Fox Lodge

Ketchikan, Alaska

POSITION STATEMENT: Expressed concerns with the proposed food code regulations.

TIM MONTGOMERY, Co-Owner

Steamers Restaurant

Ketchikan, Alaska

POSITION STATEMENT: Suggested setting aside the proposed regulations and starting over.

LARRY HACKENMILLER

Interior Alaska Cabaret Hotel Restaurant & Retailer's Association

Fairbanks, Alaska

POSITION STATEMENT: Expressed concerns with the proposed food code regulations.

PATRICK WILSON, Plant Manager
Petersburg Fisheries
Petersburg, Alaska

POSITION STATEMENT: Expressed concerns with the proposed food code regulations.

BRIAN LYNCH, Co-Owner
Petersburg restaurant
Petersburg, Alaska

POSITION STATEMENT: Expressed concerns with the proposed food code regulations.

FERNANDO SALVADOR, Food & Beverage Manager
Talkeetna Alaskan Lodge
Talkeetna, Alaska

POSITION STATEMENT: Expressed concerns with the proposed food code regulations.

KAREN ROGINA
Alaska Hospitality Alliance
Anchorage, Alaska

POSITION STATEMENT: Testified that the process and the proposed regulations need to be less threatening and more relevant to what everyone wants to accomplish, which is food safety for Alaska.

KRISTIN RYAN, Director
Division of Environmental Health
Department of Environmental Conservation
Anchorage, Alaska

POSITION STATEMENT: Answered questions.

ACTION NARRATIVE

VICE CHAIR GENE THERRIAULT called the Joint Committee on Administrative Regulation Review meeting to order at [1:11:03 PM](#). Senators Therriault, Ben Stevens, and Hoffman were present at the call to order.

HEARING ON DEC PROPOSED CHANGES TO THE ALASKA FOOD CODES

VICE CHAIR THERRIAULT related what Chair Anderson had wanted to say were he able to be present, which follows:

Because we have received so much comment from the food and beverage industry, including representatives of the seafood processing industry regarding the proposed food codes, the Administrative Regulation Review Committee deemed it necessary to take a closer look at these regulations. It was Representative Bill Williams, last year, that enabled this regulatory process. I understand his intent was to save costs; we will look today to see if that intent has, in fact, been followed. Another element we look to in this committee is the necessity for these regulations. We have yet to see any verifying evidence or statistics that say we have a public health problem with food establishments. We would like that to be presented. We also will look at the increased burden that these regulations will lay upon the industries that are effected by them. Finally, we have heard from the seafood processing industry that has found itself being effected by these regulations as well.

VICE CHAIR THERRIAULT went on to welcome those who flew in from Seattle to attend this hearing and those department representatives in attendance. He then noted that due to the amount of concerns raised, [Chair Anderson], in a letter to the department, has suggested that the public process for such sweeping change be extended in order to adequately respond to the industry's concerns.

[1:13:09 PM](#)

KURT FREDRIKSSON, Acting Commissioner, Department of Environmental Conservation (DEC), pointed out that the department is in the process of considering revisions to the food code. He explained that [the revisions] are in response to the passage of House Bill 378 last year, which made one primary change to existing food statutes such that it required training, testing, and certification of those involved in food handling and processing activities. Mr. Fredriksson acknowledged receipt of the April 6, 2005, letter from Chair Anderson, and noted that unfortunately he wasn't able to provide a timely response to it. However, he announced that he will take into consideration Chair Anderson's suggestion for an extended response period.

MR. FREDRIKSSON reminded the committee that after the passage of House Bill 378 last year, the department held three workgroup meetings in order to obtain the thoughts of stakeholders. All permit holders were notified. Based on the aforementioned

meetings, regulations were drafted and received public notice. Mr. Fredricksson explained that once the draft regulations are prepared with stakeholder input, they are brought to his attention for review. He said that he then decides whether or not they are suitable for public review. When the regulations are put out in draft form, there is the understanding that there are likely to be changes resulting from the public comment period. He informed the committee that the public comment period has ended [for the food code], but pointed out that a 60-day public review period was held, which is about twice the length of a normal public comment period. The department also held nine workshops around the state to which approximately 200 folks attended. Mr. Fredriksson clarified that there were workshops, which were educational, and hearings, which were formal and recorded. Those nine were held around the state, then the public comment period was closed. He mentioned that about 75 public comments were received during that time. Mr. Fredriksson highlighted that DEC touches everyone's life and the department's role can be very controversial at any given time. He related that for a noncontroversial package the department receives nine to ten public comments, while for [controversial] packages up to 500 comments have been received.

MR. FREDRIKSSON further explained that the staff of the Division of Environmental Health review and consider the comments and suggested changes to the proposed draft regulations. The division prepares a response and recommendations. The director of the division reviews those recommendations and comments to public comments/recommendations received and can make adjustments as needed. When the division director is comfortable with draft regulations, they are then passed on to the director as a final adoption package for consideration and submitted to governor. At every step of the way with this, he said that he and department staff take a great deal of time in reviewing the comments and any proposed changes to the regulations. Mr. Fredriksson highlighted that the department's job [in promulgating regulations] is to meet the intent of the legislature in a regulatory context. At this point, Mr. Fredriksson said that the recommendations from [division] staff haven't been received, thus the food code is fairly early in the process and no final decision on any specific comment has been made. With regard to Chair Anderson's request to take additional public comment, he reiterated that it would be taken into consideration. However, he noted that at this time, the department hasn't made a decision on any specific comment or the need for additional public comment.

1:21:06 PM

MR. FREDRIKSSON mentioned what might be cause for additional public review. He recalled packages that generated more controversy than anticipated, which resulted in the department opening up an additional 30 days of public comment. He specified that another reason to have additional public comment would be if the department, through the public comment period, learns of any major changes to the regulations that the department feels are necessary but fall outside the scope of what was publicly noticed.

1:25:02 PM

EARL HUBBARD, Vice President, Trident Seafoods, informed the committee that Trident Seafoods is a large, diversified seafood company operating in Alaska. He noted that Trident Seafoods has a significant business investment in the state as well as a significant investment in the image of Alaska. Therefore, any time a department/entity of the state suggests regulatory changes, Trident Seafoods pays particular attention to the implications for it. He informed the committee that he is new to taking advantage of the Joint Committee on Administrative Regulation Review, and thus it's unclear as to the timing of Trident Seafoods' comments and whether those comments should coincide with DEC's comment period. He noted that Trident Seafoods has enjoyed a good relationship with DEC in the past and he hopes to maintain that.

MR. HUBBARD said that Trident Seafoods has taken advantage of the comment periods, which are now closed. The difficulty that Trident Seafoods has is that it has 100 percent success in prohibiting foodborne pathogens in any of its establishments. He opined that seafood operators are quite different in their handling of food than public food services. For instance, seafood operators control the number of portions, the environment, and know the number of employees it feeds and when they are fed. Mr. Hubbard emphasized that Trident Seafoods has a vested interest to maintain food safety and comply with existing federal and state food laws. Although the purpose of the legislative dialogue is to consider all points of view, he expressed concern that his company's hard-earned money would go toward programs that don't seem necessary. Mr. Hubbard questioned why [seafood operations] were included in this new set of requirements, which will cost the industry a lot of money. He speculated that it may have been the case that including the seafood industry in these broad-sweeping

regulations wasn't contemplated at first. Mr. Hubbard informed the committee that [Trident Seafoods] will request an exemption from these requirements based on its history and performance. In closing, he related that he has faith in DEC.

1:30:30 PM

VICE CHAIR THERRIAULT surmised that Mr. Hubbard's main concern is in regard to the food his company prepares and provides for its employees.

MR. HUBBARD replied yes, adding that Trident Seafoods isn't a public food service. He specified that the private galleys in the company's vessels would be impacted as well as the company's shore-based facilities. Mr. Hubbard informed the committee that in the seafood industry the perceived image is as important as the actual image. Therefore, [Trident Seafoods], which has no actual problem in foodborne pathogens, doesn't want the risk of a perceived risk by being included in these regulations. Mr. Hubbard said that the risk of foodborne pathogens is so low with existing mechanisms, and therefore he didn't believe there is more benefit than burden in these [proposed regulations].

1:31:56 PM

SENATOR HOFFMAN asked if Trident Seafoods' position is the same as Ocean Beauty Seafoods in that it's requesting an exemption of activities only for seasonal seafood processing facilities.

MR. HUBBARD said that he has been told that Ocean Beauty Seafoods will be requesting an exemption. He said that it won't necessarily be a seasonal exemption. He then informed the committee that some of [Trident Seafoods'] safest facilities are those that aren't seasonal. However, he acknowledged that the most professional staff are always those with the most experience on a day-to-day basis. For example, Trident Seafoods owns the largest seafood processing center on the West Coast, which is located on Akutan Island. Professional staff are hired and maintained for the aforementioned facility. Moreover, federal inspectors are brought in to assure that the facility "is on the right track" and make the ways of measuring the aforementioned more efficient. Mr. Hubbard suggested that the department may have difficulty in measuring the performance of a program that's not based on a problem to begin with. Mr. Hubbard specified that the exemption Trident Seafoods seeks is for its establishments.

1:34:12 PM

KENNY LUM, Vice President/Center Director, Food Products Association (FPA), Center for Northwest Seafood, paraphrased from the following written testimony [original punctuation provided]:

The Food Products Association (FPA) is the voice of the \$500 billion food processing industry on scientific and public policy issues involving food safety, food security, nutrition, technical and regulatory matters and consumer affairs. FPA's scientific centers and international office (Bangkok, Thailand), its scientists and professional staff represent food industry interests on government and regulatory affairs and provide research, technical assistance, education, communications and crisis management support for the Association's U.S. and international members. FPA members produce processed and packaged fruit, vegetable, and grain products, meat, poultry, and seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers.

We appreciate the opportunity to provide further emphasis, and clarification for the written comments that we submitted on March 15, 2005 for the proposed changes to the Alaska Food Code.

First, we would like to commend the AEDC on their efforts to implement regulation intended to protect public health. FPA agrees that effective regulatory controls that can be practically implemented, and adequately enforced can enhance food safety. Our comments are intended to provide guidance in developing an effective Food Code that directs and prioritizes Department efforts in a manner that results in real food safety gains with regard to public health.

Our core comment to the Department requests an exemption for food service (mess hall/dining) operations of food processors permitted under 18 ACC 34 (Fish Inspection Regulations). Specifically, exemption from the proposed Food Code (proposed revisions to 18 AAC 31), except for the fees required by 18 AAC 13.050, Certification of a food protection

manager required by 18 AAC 31.320, and food worker cards required by proposed 18 AAC 31.330.

We understand the need for the Department to validate the exemption, and offer the following reasons we feel it is warranted:

- Commercial food processing establishments that are large enough to provide food service for their employees are managed by staff that include food safety professionals. These professionals are trained and qualified to ensure the safety, and regulatory compliance for food products produced by the processing facility. Likewise, these food safety professionals are involved in the management oversight of food service operations of the processing facility, and are qualified to ensure foods served by those facilities are safe.
- Meal service at processing facilities is unique in that the customer base is known, and food is prepared in quantity for a specific number of consumers, and in a very short preparation time. Also, consumers are limited in the time available to dine. This results in meals that are prepared, dispersed, and consumed in a manner that does not result in conditions that may contribute to food illness, i.e. growth of foodborne pathogens.
- The 2001 FDA Model Food Code, which the Alaska Food Code is attempting to achieve consistency with, exempts food processing facilities. While this exemption is not specific to food service operations of a food processing operation, it does recognize a management requirement for food processors that must be qualified to comply with other federal and state regulations that ensure the production of safe food.
- Not surprisingly, there is no history of significant foodborne illness outbreaks that were the direct result of consumption of food served at a food processor's mess hall or dining facility.

Our written comments also addressed the application of civil fines in proposed 18 AAC 31.915 as an enforcement tool, and compliance incentive. Civil

finer are not necessary! The Department already has sufficient enforcement mechanisms including permit suspension and notice of closures. Added civil fines do nothing to enhance implementation or correction of violations, and may actually inhibit compliance efforts for small, marginally funded establishments by reducing the resources available to make the necessary operational or facility modifications to bring them into compliance.

Our written comments also include several recommendations on specific technical provisions which we feel are adequately elaborated in the document.

In summary, we have provided what we feel is compelling substantiation that an exemption for food service operations of food processing facilities is appropriate. An exemption of business entities that are already fulfilling the regulatory intent is critical to the success of the Food Code, as it will assist the Department in focusing and prioritizing their efforts and resources on areas that may require additional guidance.

The summary table of changes to the Alaska Food Code is 34 pages long. It contains 116 individual subsection changes to the existing Alaska Food Code. 34 of the changes have no equivalent requirement in the federal FDA Food Code. 39 of the proposed changes have no equivalent requirement in the existing Alaska Food Code. And 19 of the proposed changes have no equivalent requirement in either the federal or existing Alaska Food Codes. This demonstrates the sweeping, and in some cases novel nature of the proposal. We are asking that the committee seriously consider the implications of applying additional regulation on an industry where the regulatory objective is already met, creating an unnecessary burden on the food processing industry in Alaska.

[1:44:30 PM](#)

JIM YONKER, Ocean Beauty Seafoods, characterized this meeting as a unique opportunity to address a concern and hopefully reach a beneficial conclusion. He noted that he supplied comments regarding the proposed changes to 18 AAC to the director of DEC on March 15th. Mr. Yonker informed the committee that Ocean

Beauty Seafoods operates seven seasonal salmon processing facilities in Alaska. Ocean Beauty Seafoods provides food service to all or part of the staff at these facilities. As has been stated earlier, there is no history of illness from these food service facilities. He highlighted that it's not to the company's advantage to provide food service that makes its employees ill and unable to work. However, Mr. Yonker noted his agreement with the belief that training is critical to any operation, and therefore he supported DEC's comments regarding providing training to the managers of food service facilities and those who oversee the managers. However, he said he didn't believe it's necessary to have the additional record keeping and regulations being proposed. Mr. Yonker requested that the Alaska salmon industry/seafood industry be exempt from the specific regulation. He offered to work with DEC to formulate this exemption and create regulations that are meaningful and workable.

[1:48:36 PM](#)

DOUG DONEGAN opined that the revised regulations constitute a dramatic change to the existing food service inspection program. Basically, in Alaska inspectors perform on-site inspections of food service establishments to determine whether the facility is properly constructed and operated. That system has worked well through the years and incidents of illness caused by Alaska food service operations are exceedingly rare. However, the new regulations shift the emphasis to review of reports rather than inspections. Four times a year operators will mail reports. He estimated that there could possibly be 1,000 food service operations in Alaska, and therefore the department will receive 4,000 reports a year. Those reports will have to be reviewed, filed, and commented on which he opined will decrease actual on-site facility inspections. Rather than embarking on such a drastic change to a food safety program with a good track record, certain questions should be answered. He questioned whether DEC could accomplish the same thing [as would the regulations] by simply reducing inspections at good facilities and focusing on those operations that need more attention. Mr. Donegan inquired as to the information that shows the proposed regulations will keep individuals as safe as the existing program. He also inquired as to the costs these regulations create for the department and operators. Mr. Donegan predicted that these new regulations will cause confusion for many operators. Mr. Donegan opined that no matter the amount of fine-tuning to the regulations, the proposed regulations shift the emphasis from field inspections to paperwork review and thus

will create an unnecessary additional set of requirements for operators.

1:51:35 PM

DALE FOX, Executive Director, Alaska Cabaret Hotel Restaurant & Retailer's Association (CHARR), informed the committee that DEC staff have stated that the new food code is an opportunity to show the Lower 48 how Alaska does things. However, most Alaska businesses don't like the idea of being the "guinea pig." Mr. Fox related that most operators acknowledge the importance of DEC and food safety issues. Although he complimented the department on its professionalism, he related that most operators question the need for so many large changes. The general belief is that restaurateurs are doing a good job with no significant foodborne illness problems. Compliance with the new food code will create huge costs for both employers and employees and although it's well intentioned, the new regulations are complete overkill.

MR. FOX then reviewed the premise of the program in order to determine whether it's reasonable. He opined that the food services industry is doing well with serving safe food with minimal inspections from DEC. He then turned to self-inspections and said that a good operator already does those because it's in his or her best interest to do so. Under the proposed food code, following the 109-page regulations will cost businesses time and money. However, he questioned whether filling out paperwork would address bad operators and change them into good operators. Mr. Fox opined that there isn't a problem and if there is a problem, self-inspections won't fix it.

MR. FOX pointed out that standard operating procedures are one of the recommended actions [in the proposed regulations]. Standard operating procedures are probably utilized by most operators, particularly corporate operators. However, the small facilities probably don't have standard operating procedures and it would take a fair amount of work to assist them to get in line with those requirements. With regard to the work/health issues, everyone wants servers and cooks to be healthy. He said he didn't know what many of the illnesses/diseases listed are nor would he expect employees to know. Furthermore, he questioned the legality and workability of asking an employee about the health of his or her roommate. Mr. Fox returned to the issue of self-assessments and related that those who are

good operators are already doing self-assessments daily rather than the proposed quarterly assessment.

[1:57:21 PM](#)

MR. FOX moved on to food worker cards, on which he said it's difficult to comment because he hasn't seen the test or the course, although he understood it will be on-line. There are 2,000-3,000 food service workers in the state, he asked if the department needs \$300,000 in new revenue to establish a web site and have an on-line test. He questioned whether this fee is about the department garnering revenue or people garnering knowledge. If it's about the latter, then people should be allowed to take the test on-line for free. With regard to the issue of wrapping, covering, and inverting silverware, Mr. Fox informed the committee that the Alaska CHARR has determined this to be overkill and burdensome. He also characterized the posting of complaints as overkill because what would keep a competitor from complaining so that it would have to be posted. On the matter of no bare hand contact, the FDA rules specify minimal hand contact, which he felt was reasonable. He highlighted that requiring a fry cook to wear plastic gloves is dangerous because of the possibility of melting the gloves. Mr. Fox then turned attention to the required warning labels for certain shellfish, which basically tell people they shouldn't eat certain shellfish because they could die from it. Again, it's overkill, he opined. Moving on to the fines specified in the legislation; he characterized those as fairly arbitrary. Many are concerned that the fines will be based on how well the DEC inspector likes or dislikes the [restaurant/restaurant owner]. On the matter of bars and taverns, he has never heard of an incident of foodborne illness in such a facility. He characterized this as overkill as well.

MR. FOX noted that Alaska CHARR reluctantly supported this legislation last year because of the concern that the regulations might go overboard, which seems to have happened. All along DEC has said that everyone should trust that they will develop reasonable regulations. However, now that the regulations have been put forth, the industry almost universally believes that they aren't reasonable. Now, parties have made their comments, and still DEC says to trust them to carefully read the comments and make changes. Although he hoped the aforementioned is true, he wanted to reserve the right to return to the legislature if the regulations continue to be overkill. The good news, he said, is that DEC is going to phase in compliance over 12 months. Therefore, there is the opportunity

to come before the legislature next year. Mr. Fox concluded by noting that the industry is fairly nervous about these rules.

2:04:00 PM

VICE CHAIR THERRIAULT noted that the legislature, if it believes the regulations are out of line, has the ability to pass legislation to modify the underlying statute. However, the hope is that the aforementioned isn't necessary. This committee allows the legislature to be brought into the discussion, although the committee can't necessarily dictate how the regulations package moves forward.

MR. FOX said that he appreciated the committee's interest and concern.

2:04:53 PM

KAREN LYNCH, Food & Beverage Director, Cape Fox Lodge, informed the committee that lodge staff already perform all the health and cleanliness inspections, many of which are on-line documents. She, too, expressed concern that some of these regulations go overboard.

2:05:46 PM

MEGHAN POPELY, General Manager, WestCoast Cape Fox Lodge, said that Mr. Fox did a good job covering the issues she felt were overkill and burdensome in regard to [the lodge's] finances. Ms. Popely mentioned that she had sent a letter to the committee on this matter.

2:06:56 PM

TIM FRANK, Executive Chef, WestCoast Cape Fox Lodge, related his agreement with all of Mr. Fox's comments. Mr. Frank informed the committee that the comment period on these proposed regulations was short, and folks weren't notified in writing. Furthermore, he indicated his understanding that comments at the DEC hearings weren't necessarily taken into consideration. Mr. Frank noted that he has also sent legislators a letter regarding his concern with the proposed food code regulations. He expressed his disgust with the regulation regarding signage of food poisoning at the entrance of a restaurant. Mr. Frank related that he has a good relationship with the health inspectors and even calls them on a regular basis for suggestions on matters. Therefore, he didn't want to lose that

relationship. Still, it seems bizarre to have to pay \$200 for an inspection in order to avoid fines. He discussed the financial difficulties these proposed regulations will create for restaurants. With regard to the proposed no bare-handed contact, he highlighted that it's just as easy to contaminate gloves as it is hands. Forcing staff to wear gloves at all times will cost quite a bit. Mr. Frank characterized the proposed wrapping of silverware regulation as ludicrous. In conclusion, Mr. Frank expressed his hope that the department can reconsider proposals and allow those in the food service industry to have more of a voice in the process.

[2:11:50 PM](#)

TIM MONTGOMERY, Co-Owner, Steamers Restaurant, began by thanking DEC for its past work and inspections. However, he characterized the road DEC is going down, pursuant to these proposed regulations, as over regulating the entire food service industry. Mr. Montgomery supported the comments of Mr. Fox. He turned to the proposed glove requirements, and related the difficulties with the glove regulation. For example, those who wear gloves and work with a salamander will melt the gloves to their hands. The proposed glove regulation is an example of overregulation. He informed the committee that gloves are worn at Steamers Restaurant in appropriate situations. Mr. Montgomery said that he didn't believe it's appropriate to jump into something and then rely on legislation to re-regulate it.

[2:14:00 PM](#)

LARRY HACKENMILLER, Interior Alaska Cabaret Hotel Restaurant & Retailer's Association (ICHARR), noted that the committee should have his written comments. Mr. Hackenmiller said that these proposed regulations allow DEC to freely use their discretion to enforce regulations written without clear meaning or purpose in the area of their authority. He questioned how that safeguards the public health. Furthermore, proposed regulations invite a wide range of litigation which is not covered under any fiscal note. Moreover, administrative law also places food operators at a disadvantage in regard to due process because [food operators] are considered guilty until proven innocent in these cases. Mr. Hackenmiller indicated concern with regard to the signage proposed in these regulations.

MR. HACKENMILLER pointed out that these regulations define "seafood" as fresh water fish, which is problematic and seems to relate that restaurants will be cited and charged fines. Those

finer are arbitrary and seem inconsistent. Currently, DEC uses a point system with inspections, but the proposed regulations will delete that entire system. He suggested that the point system should be maintained and then phased out [over time] and the [fine] schedule should be placed in the regulations. Mr. Hackenmiller indicated that the point system isn't working because of budget cut backs, which isn't the operators problem. Furthermore, Mr. Hackenmiller questioned what fining an establishment because the bartender doesn't have a food handler card has to do with public safety or foodborne illnesses. He reiterated the lack of a schedule of fines. He charged that if regulations aren't understood by the industry and the department, then no one is maintaining the public health. Therefore, he suggested that the fine system be set aside. He charged that this fine system was intended to create and generate funding, he opined. Therefore, he emphasized the need to rewrite and proof the regulations [otherwise] there will be much litigation from these proposed regulations. Therefore, those writing the regulations have the duty and obligation to make clear and understandable regulations and thus these proposed regulations need to be set aside and the process started over.

[2:19:05 PM](#)

PATRICK WILSON, Plant Manager, Petersburg Fisheries, related his understanding that the certified food protection manager needs to be on site at all times throughout [operating hours]. If that person was fired or quit all of a sudden, it would be problematic to fill that position within 30 days, especially for those small and remote operations. In fact, some of the operations only operate for a portion of the year. Seafood facilities have demanding regulations as they are overseen by the Environmental Protection Agency (EPA), FDA, DEC, National Marine Fisheries Service (NMFS), Alaska Department of Fish & Game (ADF&G), Department of Labor & Workforce Development, and customers. He noted that inspections occur from regulatory agencies as well as customers.

MR. WILSON expressed concerns with regard to the proposed fines, which he said were arbitrary. He acknowledged that DEC is struggling financially and that there have been a reduced number of inspections. He hoped that the [reduced number of inspections] can be attributed to the department focusing on those who don't comply. He predicted that all the paperwork generated by these regulations may increase license fees or fines, which was the case with NMFS when individual fishing

quotas (IFQs) was put in place. Although [NMFS] realized that the IFQs were generating so much paperwork that it couldn't keep up, if an entity was late, fines were invoked. All of the aforementioned lead to massive streamlining that has become more user friendly each year. Mr. Wilson saw [its proposed regulations] as creating a similar situation, which will result in a lot of wasted time and energy. Mr. Wilson echoed earlier comments regarding gloves being appropriate in certain situations, although dangerous around hot surfaces. In fact, he recalled an inspector in the past recommending not wearing gloves because they can be contaminated. Mr. Wilson noted that he has already been through the training, which seems to focus time in an area in which he didn't believe there is a real problem. Furthermore, the programs already in place in the seafood plant to address food safety overlaps into the food service provided for the plant's employees.

[2:26:09 PM](#)

BRIAN LYNCH, Co-Owner, Petersburg restaurant, noted his agreement with the comments of Mr. Wilson, in particular regarding gloves. The proposed regulations create a dubious health safety requirement and actually creates a serious safety problem. Section .320 regarding a certified operator seems to require that such a trained individual be present seven days a week during operation, which may be difficult for seasonal businesses. Mr. Lynch noted his appreciation of the current job done by DEC with its inspections. He also expressed concern with regard to the paperwork requirements.

[2:28:24 PM](#)

FERNANDO SALVADOR, Food & Beverage Manager, Talkeetna Alaskan Lodge, noted that he provided a three-page document to DEC during its comment period, which addressed his concerns. He also noted his agreement with the comments of the previous speakers. Mr. Salvador expressed concern with regard to the time line of the entire process. There were many discrepancies between [what was presented] at the meetings and the actual regulations. Many businesses didn't even know about the proposed changes or weren't able to attend the informative meetings. For instance, there were only about 30 in attendance at the Anchorage meeting, although these proposed regulations would impact over 4,000 businesses in Anchorage. Mr. Salvador echoed concerns with regard to the use of gloves as proposed in the regulations.

2:31:07 PM

KAREN ROGINA, Alaska Hospitality Alliance, said that much of what has been shared in today's testimony reflects the general consensus of what the Alaska Hospitality Alliance has been hearing from its hotel and restaurant members as well. Ms. Rogina opined that the process and the proposed regulations need to be less threatening and more relevant to what everyone wants to accomplish, which is food safety for Alaska. She expressed the hope that this process will make strides in that direction.

2:32:31 PM

VICE CHAIR THERRIAULT turned to the posting of complaints, and asked if the periodic newspaper publishings will not continue.

2:33:14 PM

KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), said that a 1-800 number to contact DEC for complaints was proposed. There was no posting of complaints, she further clarified.

2:33:35 PM

VICE CHAIR THERRIAULT inquired as to why [the division] decided to go beyond what's recommended or required by FDA.

MS. RYAN pointed out that the way food is regulated in the U.S. is different than how [DEC] deals with the EPA. She noted that FDA's food code is voluntary and every state does something different. She explained that each state decides what provisions they want to use from the model food code published by the FDA. Ms. Ryan specified that everything in the regulations related to active managerial control came from the FDA. However, there are some changes that the FDA doesn't care about, but are related to Alaska's specific situation. For instance, how to regulate small remote camps. There were also changes related to the labeling of wild fish, which were based on Senator Elton's legislation of last year regarding the labeling of farmed or wild fish.

2:34:53 PM

VICE CHAIR THERRIAULT turned to the lack of specificity in regard to the amount of the fines, which he opined is usually found in regulation.

MS. RYAN said that she can't say what will be the end product of the fines provisions. However, she explained that DEC requested authority to charge civil fines because, at present, the department can only issue or deny a permit. Therefore, if a facility continually fails in one aspect of the regulations, the department doesn't necessarily want to have to close that facility. The aforementioned led to the civil fines provisions. She noted that during testimony on HB 378, the department testified that it would only charge fines for serious or repeat violations. However, she acknowledged that the regulations need to be more specific in regard to what the violations would entail for the implementation of a civil fine.

[2:36:25 PM](#)

VICE CHAIR THERRIAULT moved on to the concern with regard to requiring that a warning be posted regarding seafood.

MS. RYAN said she believes that is existing regulation, although Senator Elton's legislation required that the menu must specify whether the seafood is farmed or wild. However, she offered to review that matter.

[2:36:52 PM](#)

VICE CHAIR THERRIAULT turned attention to the concerns regarding glove use and the wrapping of silverware.

MS. RYAN said that those regulations were proposed in order to obtain input. Again, she said she didn't know where the regulations will end up on those issues. She highlighted that these are nationally debated issues with which states are wrestling. Bare hand contact with ready-to-eat foods is often the cause of foodborne contamination, and therefore gloved hands at the ready-to-eat stage addresses that. She said that [the regulations] aren't requiring gloved hands through the entire food-making process.

VICE CHAIR THERRIAULT concluded by expressing his hope that the department would take today's comments into consideration as the regulation package moves forward.

ADJOURNMENT

There being no further business before the committee, the Joint Committee on Administrative Regulation Review meeting was adjourned at 2:38 p.m.