

DEPARTMENT OF AGRICULTURE

FOOD AND DAIRY DIVISION

REGULATION NO. 570, FOOD ESTABLISHMENT MANAGER CERTIFICATION

Filed with the Secretary of State on October 2, 2009

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 34, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of agriculture by section 2129 of 2000 PA 92, MCL 289.2129)

R 289.570.1, R 289.570.2, R 289.570.3, R 289.570.4, R 289.570.5, and R 289.570.6 are added to the Michigan Administrative Code.

R 289.570.1 Definitions.

Rule 1. Terms defined in 2000 PA 92, MCL 289.1101 to 289.8111, have the same meaning when used in these rules. As used in these rules:

(a) "Accredited certification program" means the "Standards for Accreditation of Food Protection Manager Certification Programs As Amended by the 2008 Biennial Conference for Food Protection." The standards may be obtained by writing the Conference for Food Protection at 1302 Silver Spur Circle, Lincoln, CA. 95648 or by visiting www.foodprotect.org. The term includes the following:

(i) Refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, continued proficiency, discipline and grievance procedures; and test development and administration.

(ii) Does not refer to training functions or educational programs.

(b) "Certified manager" means a food establishment managerial employee who is currently certified under a personnel certification program accredited by the American national standards institute, utilizing the conference for food protection standards.

(c) "Department" means the Michigan department of agriculture.

(d) "Director" means the director of the Michigan department of agriculture or his or her designee.

(e) "Food code" means food code, 2005 recommendations of the food and drug administration of the United States public health service that regulates the design, construction, management, and operation of certain food establishments, as adopted by the food law, 2000 PA 92, MCL 289.1101 to 289.8111. The food code may be obtained by writing the Michigan department of agriculture, food and dairy division at P.O. Box 30017, Lansing, MI. 48909 or by visiting www.michigan.gov/mda.

(f) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(g) "Food establishment" means an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. Food establishment includes a food processing plant, a food service establishment, and a retail grocery. Food establishment does not include any of the following:

(i) A charitable, religious, fraternal, or other nonprofit organization operating a home-prepared baked goods sale or serving only home-prepared food in connection with its meetings or as part of a fund-raising event.

(ii) An inpatient food operation located in a health facility or agency subject to licensure under article 17 of the public health code, MCL 333.20101 to 333.22260.

(iii) A food operation located in a prison, jail, state mental health institute, boarding house, fraternity or sorority house, convent, or other facility where the facility is the primary residence for the occupants and the food operation is limited to serving meals to the occupants as part of their living arrangement.

(h) "Full time" means an employee that works an average of 30 hours per week, or 75% of the operating hours if the establishment operates less than 40 hours per week.

(i) "Nonpublic school" means a private, denominational, or parochial school.

(j) "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

(k) "Public school" means a public elementary or secondary educational entity or agency that is established under 1976 PA 451, MCL 380.1 to 380.1853, has as its primary mission the teaching and learning of academic and vocational-technical skills and knowledge, and is operated by a school district, local act school district, special act school district, intermediate school district, public school academy corporation, strict discipline academy corporation, urban high school academy corporation, or by the department or state board. Public school also includes a laboratory school or other elementary or secondary school that is controlled and operated by a state public university described in Mich. Const., Art. VII, sections 4, 5, or 6.

R 289.570.2 Certified manager; obtaining, maintaining, and replacing duties.

Rule 2. (1) Food establishments required to have a certified manager under section 29 of the food law, 2000 PA 92, MCL 289.2129, shall continually employ at least 1 certified manager. The certified manager shall be a full-time employee of the establishment. The certified manager need not be present during all hours of operation. If more than 1 food establishment operated by the same person is located on the same property or contiguous properties, only 1 manager is required to be certified if that manager performs the duties under subrule (4) of these rules for each establishment. The establishment shall assure that recertification requirements are met before certification expires.

(2) Upon loss of a certified manager or a change of ownership, a new certified manager must be employed within 90 days of the date of the loss of the previous certified manager.

(3) Newly licensed establishments required to have a certified manager shall employ a certified manager by the first day of operation.

(4) Each food establishment required to employ a certified manager shall employ a certified manager who has direct authority, or exercises control or supervision, over the food employees. The certified manager shall be involved in the daily operations of the establishment and carry out the person-in-charge duties described in food code sections 2-102.11, 2-103.11, 2-201.11, 2-201.12 and 2-201.13.

R 289.570.3 Certified manager; certificates, records.

Rule 3. (1) Valid original or duplicate certificates of certified managers shall be maintained at the establishment and be made available for inspection upon request.

(2) The director may request other records be provided to verify compliance with these rules such as payroll records, work schedules, or valid identification. An establishment shall provide copies of records requested in this subrule within 3 business days of the request.

R 289.570.4 Conflict with applicable local laws; cooperation.

Rule 4. (1) Local regulations may be established that do not conflict with these rules including, but not limited to, registration of individuals, enforcement, and penalties. The department may coordinate with local authorities and share information in the enforcement of these rules and regulations.

(2) Provisions of local regulations in effect prior to April 1, 2008 that are more restrictive than those provided under MCL 289.2129 (1)(a), or these rules, may remain in effect.

R 289.570.5 Variances.

Rule 5. (1) The department may grant a statewide variance to a group of establishments by modifying or waiving the requirements of section 2129 of 2000 PA 92, MCL 289.2129, or these rules.

(2) The director may grant a variance to an individual food establishment by modifying or waiving the requirements of section 2129(1) of 2000 PA 92, MCL 289.2129, or these rules.

(3) Variance justification and procedures shall follow food code sections 8-103.10 and 8-103.11.

R 289.570.6 Enforcement.

Rule 6. (1) To allow for development of the necessary training infrastructure, the enforcement of these rules for public and nonpublic schools shall be delayed until 2 years after the effective date of these rules.

(2) Based on an assessment of the necessary training infrastructure, the director may develop agency specific plans and phase-in enforcement for establishments other than schools between 6 months and 2 years after the effective date of these rules. The assessment may include the preexistence of similar local regulations, a determination of the level of course access that exists within the agency's geographic area and the overall level of compliance by regulated establishments.