

Agency Report to the
JOINT COMMITTEE ON ADMINISTRATIVE RULES

This form must be completed by the department/agency that has the statutory authority for promulgating the rules. Please send an electronic copy of this form to the State Office of Administrative Hearings and Rules (SOAHR) at soahr_rules@michigan.gov. The SOAHR will review the document, the newspaper advertisements, and the corresponding rules prior to completing the legal certification of the rules. Please be sure to send to the SOAHR proofs of publication for the three newspaper advertisements required by MCL 24.242(1). You may mail them or send them as a scanned attachment.

Department

Michigan Department of Agriculture

Division/agency/bureau:

Food and Dairy Division

Rule set number (as assigned by SOAHR)

2007-060 AC

Title of rules:

Food Establishment Manager Certification

1. Name, address, FAX and phone numbers of agency contact person:

Kevin Halfmann
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2. Purpose for the proposed rules and background:

The proposed rules include identifying the requirements for food establishment manager food safety certification requirements. The 2007 amendments to the Michigan Food Law require certain food establishments to employ at least one certified food safety manager by June 30, 2009 and direct the department to develop rules to further define the requirements.

3. Summary of proposed rules:

- Food establishments that are required to have a certified manager under Section 29 of the Food Law, MCL 289.2129, shall continually employ at least one full time certified manager.
- Each food establishment that is required to employ a certified manager shall employ a certified manager who shall have direct authority over the food employees. The certified

manager must be involved in the daily operations of the establishment to 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.

- Certificates for certified managers must be retained at the establishment and available upon request.
- Local regulations may be established that do not conflict with these rules. Local regulations that are more restrictive than these rules may remain in effect
- The department may grant a statewide variance to a group of establishments or individual establishments by modifying or waiving the Manager Certification requirements of section 2129 of Act 92 of 2000, as amended, MCL 289.2129, or this regulation.
- There is a phase in period of up to 2 years built in to the proposed rules for the necessary training and infrastructure for affected establishments.

4. Name of newspapers and date of publication in newspapers (minimum 3 newspapers of general circulation, representing different parts of the state, one of which must be located in the Upper Peninsula):

Flint Journal – June 14, 2009
The Daily Press – June 13, 2009 (Escanaba)
Grand Rapids Press – June 14, 2009

5. Time, date, location and duration of public hearing:

June 26, 2009; 10:00 a.m.; Constitution Hall, Van Dusen Room; hearing concluded at 10:35 a.m.

6. Date of publication of rules and public hearing notice in *Michigan Register*:

June 15, 2009, Issue #10 of 2009.

7. Agency representative(s) attending hearing (include agency name and title of representative[s]):

Brad Deacon; Hearing Officer
Nancy Nyquist; Legislative Liaison
Kevin Besev; Food Program Manager
Byron Beerbower; Food Program Enforcement Manager
Kevin Halfmann; Food Program Policy Specialist

8. Names of persons (and organization represented) attending the hearing:

Rodney Blanchard, Monroe County Health Department
Teresa Allen, Community Action, Battle Creek, MI
Andy Deloney Michigan Restaurant Association
Bob Cochrane, Michigan Directors of Services to the Aging

Carmel Slebochic, Isabella County Commission on Aging
Diane Gorch, Ingham County Health Department
Jim Henry, Livingston County Health Department
Matthew Horning, Jackson County Health Department
Kristy Smith, Jackson County Department of Aging

9. Persons submitting letters, comments and testimony of support:

Andy Deloney Michigan Restaurant Association
Jim Henry, Livingston County Health Department
Barbara Campbell, Michigan Department of Education
Scott Little, Michigan School Business Officials
Catherine Durocher, Haslett Public Schools
Linda Gobler, Michigan Grocers Association
Kristen Schweighoefer, Washtenaw County Health Department
Rodney Blanchard, Monroe County Health Department

10. Persons submitting letters, comments and testimony of opposition:

Teresa Allen, Community Action, Battle Creek, MI
Bob Cochrane, Michigan Directors of Services to the Aging
Carmel Slebochic, Isabella County Commission on Aging
Kristy Smith, Jackson County Department of Aging
Linda Combs, September Days Senior Center, Van Buren Township
Donna Baade, Ludington Area Senior Center
Judy Zilke, Lenawee County Senior Center
Aaron Simonton, Monroe County Healthy Aging
Pam Haverdink, Georgetown Senior Center
Marjorie Hodges, Loose Senior Center, Linden
Stanley Bartos, Friends of Jackson Seniors, Jackson
Sue Laity, Northfield Township Senior Center

11. Summary of suggestions to modify proposed rules:

While expressing support for improving food safety, some representatives of senior nutrition sites expressed concern about the rule because they felt they would be impacted and have to have a trained and certified manager at each satellite feeding or distribution site. Satellite sites are where food preparation is considered to be less complex and therefore lower risk. In these cases food is prepared at a main facility that employs a certified manager. Workers at these satellite facilities serve the already prepared food. Comments focused on cost and time restrictions if a certified manager were to be mandatory at each satellite site. Written and oral comments suggested that MDA grant a state wide variance to senior congregate nutrition satellite sites, where food is not prepared on site.

The proposed rules as currently written contain the ability to grant a statewide variance (R 289.570.5) to a group of facilities such as a senior congregate satellite food service site that

only holds and serves food. Providing a statewide variance for the above issue was discussed and agreed upon at the manager certification rules workgroup meeting on July 10th 2009, and should address all concerns raised by the public. No change in the wording of the rule is necessary to address this issue.

A concern was brought up that certain facilities in which a certified manager is mandatory would have difficulty meeting the rules if the “full time” definition is strictly interpreted and enforced. In the proposed rules, “full time” is defined as working an average of 30 hours or 75% of the operating hours if the establishment is operating less than 40 hours per week.

The proposed rules as written contain a full time definition to assure that a certified manager is available on-site during the majority of the operating hours. The proposed rules as written provide the ability to grant a variance by an individual regulating agency. The variance capacity will allow enforcement flexibility on the part of regulating agencies. Local regulations may also be written for additional enforcement flexibility to address this concern.

Name of person completing this report:

Kevin Halfmann

Date report completed:

07-13-09

(SOAHR-JCAR January 2009)