



# *Rhode Island Department of Health*

## **PUBLIC NOTICE**

The Director of the Rhode Island Department of Health has determined to amend the rules and regulations listed below to remove the specific dollar value of all fees for licensing, laboratory and administrative services provided by the Department of Health from the individual regulations and reference all such fees to a new consolidated fee regulation (to be promulgated separately). These amendments are proposed pursuant to the authority contained in Public Law 2012-241, enacted by the General Assembly on 15 June 2012, and the relevant sections of the respective professional practice and licensure acts.

### **The following seventy-five (75) regulations are proposed to be amended:**

1. Food Code
2. Rules and Regulations Establishing Educational and Experience Requirements for Registration as a Sanitarian
3. Rules and Regulations for Asbestos Control
4. Rules and Regulations for Bottled Water
5. Rules and Regulations for Certifying Analytical Laboratories
6. Rules and Regulations for Determination of Need for New Health Care Equipment and New Institutional Health Services
7. Rules and Regulations for Lead Poisoning Prevention
8. Rules and Regulations for Licensing Assisted Living Residences
9. Rules and Regulations for Licensing Athletic Trainers
10. Rules and Regulations for Licensing Birth Centers
11. Rules and Regulations for Licensing Chemical Dependency Professionals
12. Rules and Regulations for Licensing Clinical Laboratories and Stations
13. Rules and Regulations for Licensing Clinical Social Workers and Independent Clinical Social Workers
14. Rules and Regulations for Licensing Doctors of Acupuncture and Acupuncture Assistants
15. Rules and Regulations for Licensing Home Nursing Care Providers and Home Care Providers
16. Rules and Regulations for Licensing Hospice Care
17. Rules and Regulations for Licensing Interpreters for the Deaf
18. Rules and Regulations for Licensing Kidney Disease Treatment Centers
19. Rules and Regulations for Licensing Massage Therapists
20. Rules and Regulations for Licensing Mental Health Counselors and Marriage and Family Therapists
21. Rules and Regulations for Licensing Occupational Therapists and Occupational Therapy Assistants
22. Rules and Regulations for Licensing of Hospitals
23. Rules and Regulations for Licensing of Midwives
24. Rules and Regulations for Licensing of Nursing Facilities
25. Rules and Regulations for Licensing of Nursing Home Administrators
26. Rules and Regulations for Licensing Physical Therapists and Physical Therapist Assistants
27. Rules and Regulations for Licensing Psychologists
28. Rules and Regulations for Licensing Rehabilitation Hospital Centers

## Rhode Island Department Of Health – Public Notice

29. Rules and Regulations for Licensing Respiratory Care Practitioners
30. Rules and Regulations for Licensing Speech Pathologists and Audiologists
31. Rules and Regulations for Licensing Swimming and Wading Pools, Hot Tubs, and Spas
32. Rules and Regulations for Licensure and Discipline of Chiropractic Physicians
33. Rules and Regulations for Limited Medical Registration
34. Rules and Regulations for Radon Control
35. Rules and Regulations for the Certification of Administrators of Assisted Living Residences
36. Rules and Regulations for the Certification of Health Plans
37. Rules and Regulations for the Control of Radiation
38. Rules and Regulations for the Licensing of Freestanding Ambulatory Surgical Centers
39. Rules and Regulations for the Licensing of Freestanding Emergency Care Facilities
40. Rules and Regulations for the Licensing of Nurses and Standards for the Approval of Basic Nursing Education Programs
41. Rules and Regulations for the Licensing of Nursing Service Agencies
42. Rules and Regulations for the Licensing of Organized Ambulatory Care Facilities
43. Rules and Regulations for the Licensing of Podiatrists
44. Rules and Regulations for the Licensing of Radiographers, Nuclear Medicine Technologists, Radiation Therapists and Radiologist Assistants
45. Rules and Regulations for the Licensure and Discipline of Physicians
46. Rules and Regulations for the Licensure of Barbers, Hairdressers/Cosmeticians, Manicurists, Estheticians, and Instructors
47. Rules and Regulations for the Licensure of Clinical Laboratory Science Practitioners
48. Rules and Regulations for the Licensure of Physician Ambulatory Surgery Centers and Podiatry Ambulatory Surgery Centers
49. Rules and Regulations for the Licensure of Physician Assistants
50. Rules and Regulations for the Licensure of Veterinarians
51. Rules and Regulations for the Registration of Body Piercing Technicians and Body Piercing Establishments
52. Rules and Regulations for the Registration of Distributors of Controlled Substances in Rhode Island
53. Rules and Regulations for the Registration of Tanning Facilities
54. Rules and Regulations for the Registration of Tattoo Artists and Tattoo Parlors
55. Rules and Regulations for the Utilization Review of Health Care Services
56. Rules and Regulations Governing Vital Statistics
57. Rules and Regulations Pertaining to Certification of Managers in Food Safety
58. Rules and Regulations Pertaining to Dentists, Dental Hygienists, and Dental Assistants
59. Rules and Regulations Pertaining to Embalmers, Funeral Directors, and Funeral Service Establishments
60. Rules and Regulations Pertaining to Opticians
61. Rules and Regulations Pertaining to Optometrists
62. Rules and Regulations Pertaining to Permits for Screening Programs
63. Rules and Regulations Pertaining to Pharmacists, Pharmacies and Manufacturers, Wholesalers, and Distributors
64. Rules and Regulations Pertaining to Public Drinking Water
65. Rules and Regulations Pertaining to Rhode Island Certificates of Registration for Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Programs
66. Rules and Regulations Pertaining to the Certification of Public Drinking Water Supply Treatment and Public Water Supply Transmission and Distribution Operators

## Rhode Island Department Of Health – Public Notice

67. Rules and Regulations Pertaining to the Licensing of Dietitians/Nutritionists
  68. Rules and Regulations Pertaining to the Medical Examiner System
  69. Rules and Regulations Pertaining to the Newborn Metabolic, Endocrine, and Hemoglobinopathy Screening Program and the Newborn Hearing Loss Screening Program
  70. Rules and Regulations Pertaining to the Processing and Distribution of Shellfish
  71. Rules and Regulations Prescribing Minimum Standards for Processing, Storage and Transportation of Fish and Fishery Products
  72. Rules and Regulations Related to the Licensure of Hearing Aid Dealers and Fitters
  73. Rules and Regulations Related to the Medical Marijuana Program
  74. Rules and Regulations Related to the Practice of Electrolysis
  75. Rules and Regulations Relating to Emergency Medical Services
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Notice is hereby given in accordance with the provisions of §42-35-3(a)(2) of the Rhode Island General Laws, as amended, that the Director is affording all interested persons the opportunity to submit data, views, or arguments in writing on this matter. Opportunity for public hearing shall be granted if requested by twenty-five (25) persons, by a government subdivision or agency, or by an association having not less than twenty-five (25) members. *Otherwise, no hearing shall be convened.* Should a hearing be requested by twenty-five (25) persons, by a government subdivision or agency, or by an association having not less than twenty-five (25) members, *a hearing shall be scheduled only for the regulation(s) for which the request for hearing was received.* All regulations for which a public hearing is not requested will be filed with the Rhode Island Secretary of State pursuant to Chapter 42-35 of the Rhode Island General Laws, as amended, shortly after the **10 September 2012** deadline (as below).

Such input or requests for public hearing must be received in writing **no later than Monday, 10 September 2012**. Such input or requests should be addressed to: Michael Fine, M.D., Director, Rhode Island Department of Health, Three Capitol Hill, Room #401, Providence, Rhode Island 02908-5097.

In the development of these amendments, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach, duplication, or overlap was identified based upon available information.

Copies of all regulations are available for public inspection in the Cannon Building, Room #201, Rhode Island Department of Health, Three Capitol Hill, Providence, Rhode Island 02908-5097, on the Secretary of State's website: <http://www.sos.ri.gov/rules/>, by calling 401-222-7767, or by e-mail to [Bill.Dundulis@health.ri.gov](mailto:Bill.Dundulis@health.ri.gov).

Signed this 3<sup>rd</sup> day of August 2012

*Original signed by Michael Fine, MD*

Michael Fine, M.D., Director of Health

# RULES AND REGULATIONS PERTAINING TO CERTIFICATION OF MANAGERS IN FOOD SAFETY

[R21-27-CFS]



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

March 1993

***AS AMENDED:***

January 2002 (re-filing in accordance with the provisions of section 42-35-4.1 of the Rhode Island General Laws, as amended)

January 2007 (re-filing in accordance with the provisions of section 42-35-4.1 of the Rhode Island General Laws, as amended)

September 2007

January 2012 (re-filing in accordance with the provisions of section 42-35-4.1 of the Rhode Island General Laws, as amended)

**August 2012 (Proposed)**

**COMPILER'S NOTES:**

**Proposed Additions: Underlined**

**Proposed Deletions: ~~Strikeouts~~**

## INTRODUCTION

These amended *Rules and Regulations For Certification of Managers in Food Safety [R21-27-CFS]* are promulgated pursuant to the authority conferred under chapters 23-1 and 21-27 of the General Laws of Rhode Island, as amended, and are established for the purpose of protecting Rhode Island consumers from foodborne illness.

In accordance with the provisions of section 42-35-3(c) of the General Laws of Rhode Island, as amended, in the development of the regulations, consideration was to: (1) alternative approaches to the regulations; (2) duplication or overlap with other state regulations. Based on the available information, no known alternative approach, duplication or overlap was identified.

These amended regulations shall supersede all previous *Rules and Regulations For Certification of Managers in Food Safety* promulgated by the Department of Health and filed with the Secretary of State.

## TABLE OF CONTENTS

	<u>PAGE</u>
PART I	
<u>DEFINITIONS</u>	1
R21-27-CFS	
1.0    Definitions	
PART II	
<u>CERTIFICATION REQUIREMENTS</u>	2
R21-27-CFS	
2.0    General Requirements	
3.0    Qualifications for Certification	
4.0    Application and Fee	
5.0    Responsibilities of Certified Managers in Food Safety	
6.0    Renewal of Certification	
7.0    Suspension or Revocation of Certification	
PART III	
<u>REQUIREMENTS FOR PROGRAM APPROVAL</u>	5
R21-27-CFS	
8.0    Approval of Manager Certification in Food Safety Training Program	
PART IV	
<u>ADMINISTRATION AND ENFORCEMENT</u>	7
R21-27-CFS	
9.0    Exemptions	
10.0   Administrative Fines	
11.0   Severability	

## **PART I    DEFINITIONS**

### Section 1.0 *Definitions*

- 1.1 "Manager certified in food safety" means a person certified in this state in accordance with the requirements herein.
- 1.2 "Director" refers to the Director of the Rhode Island Department of Health.
- 1.3 "Division" means the Division of Food Protection, Rhode Island Department of Health.
- 1.4 "Employee" means any person who works with or without pay in a food establishment.
- 1.5 "Examination" shall mean an examination in food safety approved by the Division in accordance with the provisions of these regulations.
- 1.6 "Food establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes but is not limited to restaurants, caterers, nursing and retirement homes, hospitals, private clubs, industrial cafeterias, public and private educational institutions, and delicatessens in retail food stores that cook and offer prepared food in individual service portions.
- 1.7 "Food Safety Course" means a course approved by the Division in accordance with the provisions of these regulations.
- 1.8 "Full-time equivalent" means forty (40) hours a week.
- 1.9 "Potentially hazardous foods" means any food or food ingredient, natural or synthetic in a form capable of supporting a) the rapid and progressive growth of infectious or toxigenic microorganisms or b) the slower growth of *Clostridium botulinum*.
- 1.10 "Itinerant vendor" means a food vending business serving food or drink from any establishment or conveyance without fixed locations and without connection to water supply and sewage disposal systems.
- 1.11 "Bed and breakfast" establishment means an owner/occupied residence providing accommodations for a charge to the public in operation for more than ten (10) nights in a twelve (12) month period. Breakfast may be provided to guests only. The total number of individuals served shall not exceed twelve (12), including the owner and any other individuals living or eating on the premises. Bed and breakfast establishments shall not include motels, hotels, or boarding houses.

## **PART II CERTIFICATION REQUIREMENTS**

### **Section 2.0 *General Requirements***

- 2.1 Each food establishment where potentially hazardous foods are prepared shall employ at least one (1) full-time, on-site manager certified in food safety who is at least eighteen (18) years of age.
- 2.2 Establishments which employ ten (10) or more full-time equivalent employees directly involved in food preparation shall employ at least two (2) full time, on-site managers certified in food safety.
- 2.3 Establishments which primarily serve the elderly and individuals with diminished immune systems shall have a manager certified in food safety present during preparation of all hot potentially hazardous foods.
- 2.4 Once a manager certified in food safety terminates employment, establishments shall have sixty (60) days to employ a new manager certified in food safety, or have an individual enrolled in a Division approved food manager certification program in food safety. However, said time period may be extended by the Division.
- 2.5 Department of Health certificates for managers certified in food safety shall be prominently posted in the establishment next to the license to operate. The certificate shall be removed when the individual is no longer employed by the establishment.
- 2.6 No person shall use the title "Manager Certified in Food Safety", or in any way represent themselves as a manager certified in food safety unless they shall hold a current certificate pursuant to these regulations.

### **Section 3.0 *Qualifications for Certification***

- 3.1 In order to obtain certification as a manager in food safety an individual must meet the following requirements:
  - a) be of good moral character;
  - b) have successfully completed a food safety certification course approved by the Division within three years of application; and
  - c) have successfully passed a Division approved Food Safety Certification Examination administered under secure conditions.
    - i) If a person does not pass the certification examination after three (3) attempts, he/she must again successfully complete an approved food safety certification course prior to being admitted to any subsequent examination. All attempts at retaking the examination must be completed within six (6) months of successful completion of the course.
- 3.1.1 An applicant who has successfully passed a Division approved food safety examination after July 1, 1990 and prior to July 1, 1994 may be certified without having to complete a Division approved course in food safety. After July 1, 1994, all applicants must meet the requirements of 3.1 herein.

### 3.1.2 Reciprocity

- a) The Division will recognize similar course work and/or certificates and develop reciprocity agreements or similar approval agreements with educational institutions, industry, and state or local health departments, provided that:
  - 1) the course work or certificate was completed within three (3) years of applying for Rhode Island certification in food safety, and
  - 2) the standards for certification are essentially equivalent to the requirements of this regulation, and
  - 3) the reciprocal course and/or certificate is approved by the Division in writing.
- b) Reciprocity agreements shall be reviewed on an annual basis.

### Section 4.0 *Application and Fee*

4.1 Application for certification shall be made on forms provided by the Division. Said forms shall be completed, notarized and submitted to the Division of Food Protection. Such application shall be accompanied by the following documents:

- a) for U.S. born applicant:  
a certified copy of birth certificate;  
For foreign born applicant:  
proof of lawful entry into the country;
- b) a recent identification photograph of the applicant, head and shoulder, front view, approximately 2x3 inches in size;
- c) an application fee of ~~fifty dollars (\$50.00)~~. as set forth in the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health*;
- d) certificate of successful completion of the Food Safety course.
- e) examination results, mailed directly from the Division approved testing company.

### Section 5.0 *Responsibilities of Certified Managers in Food Safety*

- a) The manager shall have supervisory, training, and management responsibilities and shall be responsible for food preparation and service with authority and responsibility to direct and control such activities.
- b) The manager certified in food safety shall notify the Division in writing within ten (10) days of a change of name, employment or address.
- c) The certified food safety manager is responsible for operating the establishment in compliance with all relevant federal and state rules and regulations pertaining to food.

- d) The certified food safety manager shall assure that all employees engaged in food preparation do so in a manner consistent with food safety.
- f) The certified food safety manager shall develop a plan for assessing, monitoring, and controlling foodborne disease hazards in the food establishment.
- g) The certified manager shall report any illness which appears to be foodborne in nature to the Division within twenty-four (24) hours.

#### Section 6.0 *Renewal of Certification*

- 6.1 Renewal of certification shall occur every three (3) years. On or before the 1st day of January of every third year, the Division of Food Protection shall mail an application for renewal of certification to each person to whom a certificate has been issued during the current certification period. Every person who intends to continue their certification shall submit a renewal application duly executed together with a renewal fee of fifty dollars (\$50.00), made payable to the General Treasurer, State of Rhode Island, as set forth in the Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health and evidence of successful completion of the requirements as set forth in section 6.2. Managers of municipal or state food establishments shall be exempt from payment of the renewal fee.
- 6.2 In order to renew certification, applicants must present evidence of compliance with renewal requirements, which include:
- a) completion of at least six (6) hours of Division approved recertification food safety instruction, or
  - b) passing a Division approved Food Safety Certification Examination within one (1) year prior to the expiration of certification.
- 6.3 An individual with a certificate which has been expired for more than six (6) months must complete an approved food safety certification course before taking the examination.

#### Section 7.0 *Suspension or Revocation of Certification*

Certification of managers in food safety may be suspended or revoked for repeated violations of the rules and regulations of the state of Rhode Island pertaining to Food Establishments or for preventing health department personnel from performing their duty.

The individual shall surrender the certificate to the Division when certification has been suspended or revoked.

Mandatory retraining may be required for certified managers employed in establishments where there is displayed an inability to maintain safe and sanitary food handling practices as demonstrated by foodborne illnesses, serious repeat violations or other factors increasing the risk to consumers.

The certificate holders at that establishment may be required to attend a Division approved training program and repeat all requirements for certification. Under the aforementioned conditions, the Division may also require all employees to attend a Division approved training program.

The Director may also take other appropriate action pursuant to the provisions of chapter 23-1.

## **PART III REQUIREMENTS FOR CERTIFICATION OF TRAINING PROGRAMS**

### **Section 8.0 *Approval of Manager Certification in Food Safety Training Program***

8.1 All manager certification training programs must be approved by the Division. The Division shall approve only those programs offered by an approved institution/agency.

Approved institutions/agencies may include: departments of state government, colleges, universities, food/hospitality industry associations, industry chains, health care facilities, regional vocational/technical career centers, public high schools, institutional training programs or nutrition consultation agencies. Further, said course must be taught by an instructor who meets the qualifications in section 8.3. Course content must meet requirements found in section 8.4 of these regulations.

Any institution wishing to offer a training program for the certification of food managers shall apply to the Division for approval by submitting a completed application on forms provided by the Division, accompanied by documented evidence pertaining to no less than the following:

- a) sources and locations of potential students, faculty, classrooms, and other resources;
- b) names and qualifications of instructors;
- c) copy of curriculum, including any provision for practical experience;
- d) a copy of the course syllabus, which shall include:
  - 1) text book and other teaching materials used
  - 2) methods and locations used for instructions
  - 3) course content
  - 4) topics and length of class meeting
  - 5) method used to determine students participation and presence during the course sessions, examples, sign-up sheets, roster, provisions for make-up work, etc.

8.2 Approval shall be granted on a triennial basis, if the program is found to meet the prescribed requirements herein. Such approval shall be based on data accompanying the application for program approval and from on-site visits which may be conducted by the Division.

8.3 Criteria for Instructors:

To be eligible for approval as a training program, only instructors who meet the qualifications in this section can teach the course.

The minimum qualifications for a Division approved instructor are:

1. Possession of a bachelor degree with courses in the biological, chemical, or food/sciences; and at least two year's experience teaching or consulting on food related issues, or two year's employment in the food industry, or two year's employment with a food regulatory agency.

2. Currently certified in food safety through completion of the Educational Foundation or the Educational Testing Service's Food Protection Certification monitored examination with a final score of 90 or higher. If a final score of 90% or higher is not obtained after the second attempt, the individual must take an approved Food Safety Management Certification course prior to retaking the examination.
3. Successful completion of a fifteen (15) hour Division approved Food Safety Instructor Training Course. The requirements for successful completion of the fifteen (15) hour Division approved Food Safety Instructor Certification course may be waived by the Division upon presentation of equivalent educational credentials.
4. Commencing January 1993 and every three years thereafter, instructors must earn fifteen (15) professional development units. The fifteen (15) professional development units must equal fifteen (15) hours of Division approved training in food safety and sanitation topics. The following are examples of proof of such attendance:
  - a. A college transcript with course description.
  - b. A certificate of completion of the course with the course description.

#### 8.4 Criteria for Course Content for the Certification of Managers in Food Safety:

Each course shall meet the standards for content and length of training, and must be based on:

- a) the Standards developed by the Ad Hoc Committee on Training, Testing and Certification of Food Managers as approved by the Conference for Food Protection.
- b) Rhode Island Rules and Regulations pertaining to food establishments, and
- c) current FDA model Food Sanitation Codes.

8.4.1 The course shall be a minimum of fifteen (15) hours in length. The instructor should consider expanding the number of contact hours when a review of the participants reveals learning disabilities, language barriers or other factors which may inhibit learning. The course shall provide the candidates for certification with the skills necessary to implement the "Demonstrable Elements of Competency" identified in the Conference for Food Protection standards for certification of food managers.

#### 8.5 Records

Each approved institution must maintain records, for a minimum of three years, establishing its compliance with all requirements herein and such other records as the Division deems appropriate.

#### 8.6 Denial, Suspension, or Revocation of Program Approval

- a) The Division shall monitor the performance of all programs, and shall consider the following in granting and revoking approval of programs:
  - 1) compliance with these regulations;
  - 2) ability to effectively train applicants in food safety principles; and
  - 3) instructor performance.

## **PART IV ADMINISTRATION AND ENFORCEMENT**

### **Section 9.0 Exemptions**

Employees of municipal and state food establishments shall be exempt from payment of the renewal fee as set forth in the Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health.

The provisions of sections 21-27-11 through 21-27-11.13 of the general laws, and these regulations, shall not apply to:

- 1) Special events sponsored by town or nonprofit civic organizations such as, but not limited to, school sporting events, firemen's picnics, little league food booths, grange and church suppers, and fairs;
- 2) Temporary food services which have a frequency of less than six (6) events a year such as bazaars, bake sales, and suppers. Individuals responsible for temporary food operations preparing potentially hazardous foods shall be required to register with the Division, obtain food safety informational brochures, and distribute these materials to the individuals engaged in food preparation for the event;
- 3) Itinerant vendors and other food establishments that serve only commercially pre-packaged foods, beverages, and commercially precooked potentially hazardous foods requiring no manual handling of the food product such as frankfurters;
- 4) Retail food stores and delicatessens where only cold foods are prepared provided, however, that no vacuum packaging or other processes are performed which will support the growth of Clostridium botulinum.
- 5) Private homes, and bed and breakfast establishments.

### **Section 10.0 Administrative Fines**

- 10.1 The Division after due notice and opportunity for hearing shall have the right to levy administrative fines of up to five hundred dollars (\$500) against any manager certified in food safety or food establishment who violates the provisions of the rules and regulations governing food establishments.

### **Section 11.0 Severability**

- 11.1 If any provision of these rules and regulations or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of the rules and regulations are declared to be severable.