



28           **26-15a-102. Definitions.**

29           (1) "Back country food service establishment" means a federal or state licensed back  
30 country guiding or outfitting business that:

31           (a) provides food services; and

32           (b) meets department recognized federal or state food service safety regulations for  
33 food handlers.

34           (2) "Certified food safety manager" means a manager of a food service establishment  
35 who:

36           (a) passes successfully a department-approved examination;

37           (b) successfully completes, every three years, renewal requirements established by  
38 department rule consistent with original certification requirements; and

39           (c) submits to the appropriate local health department the documentation required by  
40 Section 26-15a-106.

41           (3) "Food service establishment" means any place or area within a business or  
42 organization where potentially hazardous foods are prepared and intended for individual  
43 portion service and consumption by the general public, whether the consumption is on or off  
44 the premises, and whether or not a fee is charged for the food.

45           (4) "Local health department" means a local health department as defined in  
46 Subsection 26A-1-102(5).

47           (5) "Potentially hazardous foods":

48           (a) means any food or combination of ingredients sold as a single food item that is  
49 natural or synthetic and that requires temperature control because it is in a form capable of  
50 supporting:

51           (i) the rapid and progressive growth of infectious or toxigenic microorganisms;

52           (ii) the growth and toxin production of Clostridium Botulinum; or

53           (iii) in raw shell eggs, the growth of Salmonella Enteritidis;

54           (b) includes:

55           (i) a food of animal origin that is raw or heat-treated;

56           (ii) a food of plant origin that is heat-treated or consists of raw seed sprouts;

57           (iii) cut melons; and

58           (iv) garlic and oil mixtures that are not acidified or otherwise modified at a food

59 processing plant in a way that results in mixtures that do not support growth specified in  
60 Subsection (5)(a); and

61 (c) does not include:

62 (i) an air-cooled hard-boiled egg with shell intact;

63 (ii) a food with an Aw value of 0.85 or less;

64 (iii) a food with a pH level of 4.6 or below when measured at 24 degrees Celsius or 75  
65 degrees Fahrenheit;

66 (iv) a food in an unopened hermetically sealed container that is commercially  
67 processed to achieve and maintain commercial sterility under conditions of nonrefrigerated  
68 storage and distribution;

69 (v) a food for which laboratory evidence demonstrates that the rapid and progressive  
70 growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C.*  
71 *Botulinum* cannot occur, such as a food that has an Aw and a pH that are above the levels  
72 specified in Subsections (5)(c)(ii) and (iii), and that may contain a preservative, other barrier to  
73 the growth of microorganisms, or a combination of barriers that inhibit the growth of  
74 microorganisms; or

75 (vi) a food that does not support the growth of microorganisms as specified in  
76 Subsection (5)(a), even though the food may contain an infectious or toxigenic microorganism  
77 or chemical or physical contaminant at a level sufficient to cause illness.

78 Section 2. Section **26-15a-104** is amended to read:

79 **26-15a-104. Food service establishment requirements -- Enforcement -- Right of**  
80 **appeal.**

81 (1) [~~(a) Except as provided in Subsection (1)(b), each~~] Each food service establishment  
82 in the state shall[~~, on or before July 1, 1999,~~] be managed by at least one full-time certified  
83 food safety manager at each establishment site, who need not be present at the establishment  
84 site during all its hours of operation.

85 [~~(b) Food service establishments, under the same ownership, that prepare and serve a~~  
86 ~~total of five or fewer potentially hazardous foods shall employ at least one certified food safety~~  
87 ~~manager for every ten establishment sites under common ownership.]~~

88 (2) Within 60 days of the termination of a certified food safety manager's employment  
89 that results in the food service establishment no longer being in compliance with Subsection

90 (1), the food service establishment shall:

91 (a) employ a new certified food safety manager; or

92 (b) designate another employee to become the establishment's certified food safety  
93 manager who shall commence a department-approved food safety manager training course.

94 (3) Compliance with the 60-day time period provided in Subsection (2) may be  
95 extended by the local health department for reasonable cause, as determined by the department  
96 by rule.

97 (4) (a) The local health department may determine whether a food service  
98 establishment is in compliance with this section by visiting the establishment during regular  
99 business hours and requesting information and documentation about the employment of a  
100 certified food safety manager.

101 (b) If a violation of this section is identified, the local health department shall propose  
102 remedial action to bring the food service establishment into compliance.

103 (c) A food service establishment receiving notice of a violation and proposed remedial  
104 action from a local health department may appeal the notice of violation and proposed remedial  
105 action pursuant to procedures established by the local health department, which shall be  
106 essentially consistent with the provisions of Title 63, Chapter 46b, Administrative Procedures  
107 Act. Notwithstanding the provisions of Section 63-46b-15, an appeal of a local health  
108 department decision to a district court shall be conducted as an original, independent  
109 proceeding, and not as a review of the proceedings conducted by the local health department.  
110 The district court shall give no deference to the findings or conclusions of the local health  
111 department.

112 Section 3. Section **26-15a-105** is amended to read:

113 **26-15a-105. Exemptions to food service establishment requirements.**

114 (1) The following are not subject to the provisions of Section 26-15a-104:

115 (a) special events sponsored by municipal or nonprofit civic organizations, including  
116 food booths at school sporting events and little league athletic events and church functions;

117 (b) temporary event food services approved by a local health department;

118 (c) vendors and other food service establishments that serve only commercially  
119 prepackaged foods and beverages as defined by the department by rule;

120 (d) private homes not used as a commercial food service establishment;

121 (e) health care facilities licensed under Chapter 21, Health Care Facility Licensing and  
122 Inspection Act;

123 (f) bed and breakfast establishments at which the only meal served is a continental  
124 breakfast as defined by the department by rule;

125 (g) residential child care providers;

126 (h) child care providers and programs licensed under Chapter 39, Utah Child Care  
127 Licensing Act; ~~and~~

128 (i) back country food service establishments[-]; and

129 (j) (i) food service establishments that prepare and serve a total of five or fewer  
130 potentially hazardous foods; and

131 (ii) in counting the potentially hazardous foods under Subsection (1)(j)(i), the number  
132 of potentially hazardous foods shall be counted by food item sold rather than individual  
133 potentially hazardous food ingredients in a particular food item.

134 (2) Nothing in this section may be construed as exempting a food service establishment  
135 described in Subsection (1) from any other applicable food safety laws of this state.

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**Legislative Review Note**  
**as of 1-26-05 1:43 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0150**

**Food Safety Manager Certification**

*02-Feb-05*

*3:59 PM*

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**State Impact**

This bill exempts certain food establishments from needing to have a full-time food safety manager. No fiscal impact to the state or local health departments.

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**Individual and Business Impact**

Establishments that meet the new exemption could save money by not employing a full-time food safety manager.

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**Office of the Legislative Fiscal Analyst**