

Department of State Health Services
Council Agenda Memo for State Health Services Council
June 25, 2009

Agenda Item Title: Repeal of rules and new rules concerning Accreditation of Certified Food Management Programs and the Certification of Food Managers

Agenda Number: 4g

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Food Establishment Group is in the Division for Regulatory Services and accredits certification and training programs for food managers. The Certified Food Managers (CFM) Program licenses over 100 training programs for managers new to the food industry who have need of quality education, and over 60 test sites that provide the food manager examination to those who have sufficient background in the food industry. The CFM Program provides approximately 20,000 examinations each year to these licensees.

The Division for Regulatory Services routinely monitors complaints received and resolved, numbers of new and renewed licenses, number of disciplinary actions taken and violation trends. The number of complaints received and enforcement actions are monitored on a quarterly basis.

The CFM Program is funded from general revenue; however, licensing fees charged to the programs exceed the cost of conducting the CFM Program.

Summary:

The purpose of the repeals and new rules is to improve practices and increase knowledge of food safety within the food service industry, decreasing the risk to the public of contracting a foodborne illness. The rules provide the framework for accrediting food manager and food safety programs in accordance with the Health and Safety Code, Chapter 438, and nationally recognized principles and standards.

An internal review of the CFM Program was conducted utilizing the recommendations of the Sunset Occupational Licensing Model (model). The model states that for any written exam, an agency should use a national or regional testing service and not prepare its own test. A testing service eliminates bias and uses validated questions. It also promotes standardization of licensing requirements nationwide and helps simplify the movement of licensees from state to state.

Section 229.172 and Section 229.176 are being repealed and new rules written to remove all references to the Department of State Health Services (DSHS) as one of the approved providers for the certified food manager examination. DSHS licenses three companies that meet national accreditation standards and two Internet certification examination providers that meet DSHS rule standards.

The Conference for Food Protection (CFP), an independent national voluntary, non-profit organization, has developed standards for the Accreditation of Food Protection Certification Programs. The American National Standards Institute (ANSI) is under contract with the CFP to accredit Food Protection Manager Certification Programs against the standards. Monitoring complaints and violations will be coordinated with the CFP and ANSI. Data provided by the CFP and DSHS will be used to assess the efficiency of the national exams.

CFM Program will ensure appropriate licensing and enforcement actions are applied using existing mechanisms for regulatory programs to educate food managers in the principles of food safety.

Summary of Input from Stakeholder Groups:

The proposed rules will be made available on the Food Establishments website (www.dshs.state.tx.us/foodestablishments) to solicit stakeholder input prior to the State Health Services Council meeting. Letter or email notification will be sent to CFM Programs and Test Site licensees, agency staff, the Texas Restaurant Association, the Texas Petroleum Marketers and Convenience Store Associations, and Texas Association for Local Health Officials for comment. A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register*.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #4g

Approved by Assistant Commissioner/Director: Kathryn C. Perkins, R.N., M.B.A. **Date:** 5/14/09

Presenter: Ione Wenzel **Program:** Program Specialist, Food Establishments Group **Phone No.:** 512-834-6753

Approved by CPCPI: Carolyn Bivens **Date:** 5/11/2009

TITLE 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 229. Food and Drug
Subchapter K. Texas Food Establishments
Repeal §229.172
New §229.172
Repeal §229.176
New §229.176

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §229.172 and new §229.172 concerning the accreditation of certified food management programs and the repeal of §229.176 and new §229.176 concerning the certification of food managers.

BACKGROUND AND PURPOSE

The purpose of the repeals and new §229.172 and §229.176 is to reflect the decision to remove the department as one of the approved certified food manager examination providers. Neither the statutes nor the repealed rules require the department to provide an examination. The department's decision not to provide examinations required changes to the rules. The repeal and new rules are also a result of the Certified Food Managers (CFM) Program utilizing the recommendations of the Sunset Occupational Licensing Model (model). Through its history of reviewing occupational licensing agencies dating back to 1977, the Sunset Commission has observed standard practices that guide such matters as agency structure, the oversight they receive, and their approach to licensing and enforcement. The compilation of these standard practices provides a model for evaluating occupational licensing agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. The model states that for any written exam, an agency should use a national or regional testing service and not prepare its own test. A testing service eliminates bias and uses validated questions. It also promotes standardization of licensing requirements nationwide and helps simplify the movement of licensees from state to state.

The Conference for Food Protection (CFP) has developed the essential components of a nationally recognized food manager certification examination. The components outline the criteria for the development of food safety certification examinations, which includes psychometric standards, job analysis, internal security, periodic review and examination administration. The American National Standards Institute (ANSI) is the reviewing organization for companies that choose to achieve ANSI-CFP accreditation. At this time, the department licenses three companies that meet ANSI-CFP accreditation standards. The department also licenses two Internet certification examination providers that meet department rule requirements.

SECTION-BY-SECTION SUMMARY

The repeal and new §229.172 concern the accreditation of food management programs, to reflect the decision that the department will no longer be an examination provider in Texas. References in the new section have been updated throughout to reflect this change.

Concerning new §229.172(b), the following definitions are deleted as a result of the department not being one of the approved Certified Food Manager examination providers, so these terms are no longer necessary: "Examination administrator," "Proctor," "Psychometric," "Secure," and "Traceable means." The following definition is added for clarification, "On-site examination." Minor grammatical changes are made for clarification.

The repeal and new §229.176 concern the certification of food managers, to reflect the decision that the department will no longer be an examination provider in Texas, and adds new §229.176(g) concerning Internet examination development and additional reporting requirements for Internet examination providers. References in the new section reflect these changes.

Concerning new §229.176(b), the following definitions are deleted as a result of the department not being one of the approved Certified Food Manager examination providers, so these terms are no longer necessary: "Examination administrator," "Nonprofit organization," "Proctor," "Psychometric," "Secure," and "Traceable means." The following definitions are added, "Internet examination," and "On-site examination." Minor grammatical changes are made for clarification.

FISCAL NOTE

Susan Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for the first five-year period that the rules are in effect, there will be no fiscal implications to the state or local governments as a result of implementing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will not be adverse impacts to small businesses or micro-businesses that elect to voluntarily comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. The proposed rules address the licensing requirements for accredited training programs and examination sites. The repeals and new §229.172 and §229.176 remove obsolete rule provisions and clarify existing provisions without imposing new requirements. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The purpose of these rules is to provide the framework for accrediting food manager food safety programs in accordance with the Health and Safety Code, Chapter 438, Subchapters D and G. A uniform standard governing the accreditation of food safety programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education

incurred when food establishment managers work in multiple regulatory jurisdictions. New §§229.172 and 229.176 establish the standards for the education or the demonstration of knowledge for food establishment managers. This provides more qualified personnel, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques. The state accreditation of a program or test site is voluntary.

Ms. Tennyson has determined that some small businesses and micro-businesses are subject to regulation under the proposed rules. However, no additional economic burden is associated with the proposed rules so no adverse economic impact to small businesses or micro-businesses is anticipated. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses and micro-businesses are not required.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of these sections. The public benefit anticipated as a result of administering the sections as proposed is improved practices and increased knowledge of food safety within the food service industry, resulting in a lesser risk of contracting a foodborne illness due to training of food service workers in nationally recognized principles and standards.

REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals and new rules do not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Deborah Marlow, Food Establishments Group, Policy/Standards/Quality Assurance Unit, Division for Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347 (512)-834-6753, extension 2023, or by email to ione.wenzel@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register*, and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Food Establishments Group website (www.dshs.state.tx.us/foodeestablishments). Please contact Ione Wenzel at (512)-834-6753, extension 2138, or ione.wenzel@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeals and new rules are authorized by Health and Safety Code, Chapter 438, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to §438.042, food service programs, §438.102, certification of food managers, §438.043, basic food safety accreditation, and §437.0076(b), certified food manager; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals and new rules affect the Health and Safety Code, Chapters 437, 438, and 1001; and Government Code, Chapter 531.

Sections for Repeal:

Subchapter K. Texas Food Establishments.
§229.172. Accreditation of Certified Food Management Programs.
§229.176. Certification of Food Managers.

Legend: (Proposed New Rules)
Regular Print = Proposed new language

§229.172. Accreditation of Certified Food Management Programs.

(a) Purpose. This section is intended to provide the framework for accrediting manager level food safety training programs in accordance with the Health and Safety Code, Chapter 438, Subchapter D. Food Service Programs. A uniform standard governing the accreditation of food safety programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education incurred when food establishment managers work in multiple regulatory jurisdictions. Education of the food establishment manager provides more qualified personnel, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Accredited certified food manager training program--A certified food manager training and testing program approved by the department that meets the standards set forth in this section.

(2) Alternative training methods--Training other than classroom, including but not limited to distance learning, computerized training programs, and correspondence courses.

(3) ANSI-CFP Program Accreditation--Accreditation by the American National Standard Institute (ANSI) and the Conference for Food Protection (CFP), which accredit programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.

(4) Certificate--The documentation issued by a department-approved ANSI-CFP Program examination licensee verifying that an individual has complied with the requirements of this section.

(5) Certification--The process whereby a certified food manager certificate is issued.

(6) Certified food manager--A person who has demonstrated that he or she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a certified food manager examination and becoming certified as described in this section.

(7) Certified food manager examination--A department-approved ANSI-CFP Program accredited on-site examination for food manager certification.

(8) Certified food manager program; certified food management program--A training program accredited by the department that provides food safety education for food establishment managers and administers a certified food manager examination for certification or recertification purposes.

(A) Certification program--A certified food manager program whose course work consists of a minimum of 14 hours of instruction on food safety topics which may include traditional or alternative methods of training, including distance education, and at least a one-hour certified food manager examination.

(B) Recertification program--A certified food manager program whose course work consists of a minimum of six hours of instruction on food safety topics, which may include traditional or alternative methods of training, including distance education, and a certified food manager examination.

(9) Continuing education--Documented professional education or activities that provide for the continued proficiency of a certified food management program instructor.

(10) Department--Department of State Health Services.

(11) Food--A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(12) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules;
or

(vii) a private home that receives catered or home-delivered food.

(13) Law--Applicable local, state and federal statutes, regulations and ordinances.

(14) Licensee--The individual, corporation or company that is licensed by the department to operate certified food management programs.

(15) On-site examination--An ANSI-CFP Program accredited paper and computer-based examination for food manager certification administered by a certified food manager program.

(16) Person--An association, corporation, partnership, individual, or other legal entity, government or governmental subdivision or agency.

(17) Qualified instructor--An individual whose educational background and work experience meet the requirements for approval as a qualified food management program instructor as described in this section.

(18) Reciprocity--Acceptance by state and local regulatory authorities of a department-approved certified food manager certificate.

(19) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(20) Single entity--A corporation that educates only its own employees.

(21) Sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the certified food manager program.

(22) Two-Year Renewal Certificate--The certificate issued by the department from May 6, 2004 to April 24, 2008, verifying that a certified food manager has completed the application and submission of fees for renewal of a department-issued certificate.

(c) Certified food manager.

(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:

(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;

(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;

(C) coordinating, training, supervising or directing food preparation activities, and taking corrective action as needed to protect the health of the consumer;

(D) training the food establishment employees on the principles of food safety; and

(E) conducting in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(2) Certification by training and food safety examination. To be certified, a food manager shall complete an accredited certified food management certification or recertification program and pass a certified food manager examination.

(3) Certificate reciprocity. Department-approved food manager certificates shall be recognized statewide by regulatory authorities as the only valid proof of successful completion of a department-accredited certified food management program.

(4) Certificate availability. The original certified food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

(d) Certification program course curriculum. A certification program shall include a minimum of 14 hours of food safety training utilizing the training and time requirements in Health and Safety Code, §438.043(a).

(e) Recertification program course curriculum. A recertification training program shall include a minimum of 6 hours of food safety training.

(f) Requirements for qualification of instructors. The instructors for all certified food management programs shall be department-qualified prior to teaching a class. The instructors for all certified food management programs shall meet the qualifications in these rules. Instructors meeting these qualifications shall be approved for the two-year permit term of the certified food management program licensee. The completed application form shall be submitted to the department through the accredited certified food management program licensee.

(1) New instructors. A completed application for new instructors shall be submitted by the program licensee to the department with the following documentation:

(A) the completed and signed application form;

(B) a copy of a valid food management certificate; and

(C) verification of education or experience in food safety documented by one of the following:

(i) an associate or higher college degree from an accredited institution in a major related to food safety or environmental health, evidenced by a copy of the candidate's diploma or transcript;

(ii) five years of food establishment work experience as a food manager verified in an attached resume; or

(iii) two years of regulatory food inspection experience verified in an attached resume.

(2) Nationally accredited program instructors. Nationally accredited program instructors who have met the minimum standards as set forth by this section shall be given reciprocity when instructing and administering an ANSI-CFP Program Accreditation examination.

(g) Responsibilities of qualified instructors.

(1) Compliance with certified food management program laws and rules. All qualified instructors are responsible for compliance with applicable certified food management program laws and rules.

(2) Training requirements. All qualified instructors are responsible for instructing the course content as specified in subsection (o)(3) of this section, and meeting the training time requirements as specified in subsection (n)(6) of this section.

(h) Requirements for the renewal of qualified instructors. In order to renew an instructor's qualification the program licensee shall comply with the requirements of this subsection.

(1) Contact hours for continuing education. Certified food management programs shall submit a renewal application and documentation of five contact hours of continuing education for each instructor during the two-year certified food manager program license period to maintain qualification as a certified food manager program instructor.

(2) Accepted continuing education topics. Continuing education topics may include areas in food safety or instruction enhancement.

(3) Verification of continuing education. The following may be used for continuing education:

(A) a certificate of completion for a course or seminar with the participant's name, course name, date and number of contact hours earned;

(B) a college transcript with course description; or

(C) other documentation of attendance as approved by the department.

(i) On-site examination. ANSI-CFP Program accredited food safety certification examinations shall be the only department-approved paper and computer-based certified food manager examinations.

(j) Certified food manager certificates.

(1) General certificate issuance. Certificates shall be issued by the department-approved examination provider. Candidates whose certificates are issued after successful passage of a department-approved examination shall be deemed to meet the requirements for food manager certification.

(2) Certificate period. A certified food manager certificate issued by a department-approved examination provider under this section shall comply with the *CFP Standards for Accreditation of Food Protection Manager Certification Programs*, Section 7.3, Effective Date of Certificate, as amended, 2008, at <http://www.foodprotect.org/managers-certification/>.

(3) Recertification. Candidates may become recertified by taking a recertification class and passing a department-approved examination, or by passing an examination as described in §229.176(i)(3) of this title (relating to Certification of Food Managers).

(4) Certification through single entity corporations. Candidates from accredited single entity corporations may receive food manager certificates as described in this section, except that the food manager certificate shall:

(A) clearly indicate that the certificate is valid for food manager duties performed for the single entity only;

(B) be recognized by regulatory authorities for only that single entity; and

(C) not receive reciprocity or recertification.

(k) Department certificate.

(1) Two-year renewal certificate. Certified food manager certificates issued by the department from May 6, 2004 to April 24, 2008, shall be renewed every two years and may be renewed two times.

(2) Department certificate replacement. An individual requesting a certified food manager certificate replacement shall submit a completed written application to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(l) Department certificate fees.

(1) Two-year renewal certificate fee. The fee for renewal of a two-year certificate issued shall be \$10.

(2) Replacement certificate fee. A replacement certificate fee for the department examination shall be \$15.

(3) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(m) Licensing of single entity certified food management programs. In addition to the licensing requirements as specified in subsection (n) of this section, a corporation wishing to use a single entity option, which offers course length and topic requirements as specified in Health and Safety Code, §438.043(a), shall submit to the department:

(1) a copy of the course syllabus; and

(2) a copy of the course curriculum.

(n) Licensing of certified food management program licensee. The department shall issue a license of accreditation to each certified food management program licensee who has

demonstrated compliance with this section. A license issued under these rules shall expire two years from the date of issuance. This license is not transferable on change of ownership, name, or site location.

(1) Application. A person wishing to apply for a certification or recertification certified food management program license shall submit a completed application to the department.

(2) Security agreement. The licensee shall submit a signed security agreement that individual examination items, examination item banks, certified food manager certification examinations, examination answer sheets, and candidate scores shall be secure at all times, and during administration that the examinations shall remain secure.

(3) Certified food management program license fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (p)(1) of this section.

(4) Sponsor. The licensee may designate a certified food manager program sponsor as the person responsible for the administrative management of the program.

(5) Qualified instructor. The licensee shall provide a list of all qualified food management program instructors who plan to teach an accredited certification or recertification course to the department. A completed instructor application, along with other necessary documentation shall be submitted for all non-qualified instructors.

(6) Course syllabus. The licensee shall provide a course syllabus to the department verifying the minimum of 14 hours of training for a certification program as specified in subsection (d) of this section and a minimum of six hours of training for a recertification program as specified in subsection (e) of this section. The training methods shall be designated on the application. A course curriculum shall be available for review to verify the course syllabus.

(7) Certification examination. Department-approved examination(s) utilized by the certified food management programs shall be designated on the completed application.

(o) Responsibilities of a licensee.

(1) Compliance with certified food management program laws and rules. The licensee is responsible for compliance with applicable certified food management program laws and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (p) of this section.

(3) Certified food management program course content. All certified food management programs shall be taught utilizing the training and time requirements in Health and Safety Code, §438.043(a).

(4) Change of sponsor. The licensee shall notify the department in writing of the name of the new program sponsor.

(5) Change of qualified instructor. The licensee shall ensure that only a department-qualified instructor serves as the instructor for the certified food management program. All new instructors shall complete the application for new instructors that shall be submitted by the licensee to the department with the applicable documentation. Licensees shall instruct all new instructors on the applicable laws and rules and administrative responsibilities.

(p) Required fees. All fees are payable to the Department of State Health Services and are non-refundable. Licensees shall submit fees with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. The fees shall be:

(1) Certified food manager program license fee for initial, renewal, or change of ownership. The certified food manager program license fee shall be \$600 for a two-year license for each certification or recertification program.

(2) Certified food manager program amended license fee. Program amendment fees shall be \$300 for each certification or recertification program.

(3) Late fee. Certified food manager licensees submitting a completed renewal application to the department after the expiration date shall pay an additional \$100 as a late fee.

(4) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(q) Certified food management program registry. The department shall maintain a program registry of all accredited certification and recertification programs. The registry shall be made available on the department website.

(r) Department audits. Audits of examination and classroom may be conducted to assess program compliance. Audits may be based on analysis of data compiled by the department. The licensee shall allow personnel authorized by the department access for the purposes of an audit.

(s) Denial, suspension and revocation of program accreditation. An accredited food manager program license may be denied, suspended or revoked for the following reasons:

(1) breach of the security agreement;

- (2) delinquency in payment of fees as described in this section; or
- (3) violation of the provisions of this section.

(t) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(u) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:

- (A) record the suspension of the license in the department's records;
- (B) report the suspension as appropriate; and
- (C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (l) and (m) of this section are met.

§229.176. Certification of Food Managers.

(a) Purpose. This section is intended to provide the framework of certification requirements for food managers in accordance with Health and Safety Code, Chapter 438, Subchapter G. Certification of Food Managers, supports demonstration of food safety knowledge, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) ANSI-CFP Program Accreditation--Accreditation by the American National Standards Institute (ANSI) and the Conference for Food Protection (CFP), which accredit programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.

(2) Certificate--The documentation issued by a department-approved Internet examination provider licensee or an ANSI-CFP Program examination licensee verifying that an individual has complied with the requirements of this section.

(3) Certification--The process whereby a certified food manager certificate is issued.

(4) Certified food manager--A person who has demonstrated that he or she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a certified food manager examination and becoming certified as described in this section.

(5) Certified food manager examination--A department-approved Internet examination or an ANSI-CFP Program accredited on-site examination for food manager certification.

(6) Department--Department of State Health Services.

(7) Examination site--The physical location at which the department-approved examination is administered.

(8) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(9) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules;
or

(vii) a private home that receives catered or home-delivered food.

(10) Internet examination--A department-approved examination delivery system utilizing the Internet for food manager certification.

(11) Law--Applicable local, state and federal statutes, regulations and ordinances.

(12) Licensee--The individual, corporation, or company that is licensed by the department to administer a department-approved examination for food manager certification.

(13) On-site examination--An ANSI-CFP Program accredited paper and computer-based examination for food manager certification administered by a certified food manager program.

(14) Person--An association, corporation, partnership, individual or other legal entity, government or governmental subdivision or agency.

(15) Personal validation question--A question designed to establish the identity of the candidate taking a certified food manager examination by requiring an answer related to the candidate's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the candidate.

(16) Reciprocity--Acceptance by state and local regulatory authorities of a department-approved certified food manager certificate.

(17) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(18) Two-Year Renewal Certificate--The certificate issued by the department from May 6, 2004 to April 24, 2008, verifying that a certified food manager has completed the application and submission of fees for renewal of a department-issued certificate.

(c) Certified food manager.

(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:

(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;

(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;

(C) coordinating training, supervising or directing food preparation activities and taking corrective action as needed to protect the health of the consumer;

(D) training the food establishment employees on the principles of food safety; and

(E) conducting in-house self-inspection of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(2) Certification by a food safety examination. To be certified, a food manager shall pass a department-approved Internet examination or an accredited ANSI-CFP Program on-site examination.

(3) Certificate reciprocity. A certificate issued to an individual who successfully completes a department-approved examination shall be accepted as meeting the training and examination requirements under Health and Safety Code, §438.046(b).

(4) Certificate availability. The original food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

(d) On-site examination. ANSI-CFP Program accredited food safety certification examinations shall be the only department-approved paper and computer-based examinations.

(e) Internet examinations. A department-approved examination utilizing the Internet for delivery shall meet the examination criteria outlined in this section.

(f) Responsibilities for Internet examination providers.

(1) Compliance with food manager laws and rules. Internet examination providers are responsible for compliance with food manager laws and rules applicable to Internet examinations in this section.

(2) Examination Security Agreement. Internet examination providers shall submit the department security agreement signed by the certified food manager Internet examination provider licensee.

(3) Examination security. Candidates taking Internet examinations shall be advised on the application that outside training materials or assistance shall not be used during administration of the examination and that appropriate measures shall be taken to assure that the examination is not compromised.

(g) Internet examination development. Internet examination development shall meet the criteria established by the *CFP Standards for Accreditation of Food Manager Certification Programs*, Section 4.0, Food Safety Certification Examination Development, as amended, 2008, at <http://www.foodprotect.org/managers-certification/>.

(1) Examination questions. Internet examinations shall consist of a minimum of 75 statistically valid questions that are administered at one time following any voluntary training that may precede the examination.

(2) Examination forms. Each candidate shall receive a unique form of the examination with regard to question sequence.

(3) Time allotment for non-proctored Internet examination providers. Time allotted for administration of non-proctored examinations shall not exceed 90 minutes.

(h) Internet examination administration.

(1) Registration requirements for Internet examinations. The licensee shall register the candidates and require the candidates to:

(A) verify their identity;

- (B) provide responses to ten personal validation questions; and
- (C) maintain examination security.

(2) Licensee examination disclosure information. The licensee shall inform the candidate that:

- (A) reference materials shall not be used during the examination;
- (B) the candidate shall not receive assistance from anyone during the examination; and
- (C) examination questions shall not be replicated in any fashion.

(3) Personal validation questions. The licensee shall verify a candidate's identity throughout the examination. The personal validation process shall include the following elements:

- (A) a minimum of five personal validation questions selected from the ten questions provided during registration shall be incorporated at various times during the examination;
- (B) the personal validation questions shall be randomly generated with respect to time and order;
- (C) the same personal validation questions shall not be asked more than once during the same examination; and
- (D) the examination session shall cease and the candidate shall be automatically exited from the examination if a candidate answers a personal validation question incorrectly.

(4) System support. The Internet examination provider licensee shall include the following Internet examination system capabilities and security measures:

- (A) capability to browse or review previously completed examination questions;
- (B) capability to navigate logically and systematically through the examination;
- (C) technical support personnel for Internet examination issues;
- (D) security of personal candidate information in transit and at rest;
- (E) a back-up and disaster recovery system capability; and

(F) assurance that examination data is maintained in a secure and safe environment and readily available to the department.

(5) Reporting requirements for non-proctored Internet examination administrators. Internet examination administrators who administer examinations in non-proctored locations shall submit a semi-annual report to enable the department to evaluate examination security and system performance for each language in which the examination is offered. The report shall include:

(A) statistical data to enable measurement of central tendency, ranges of examination scores, standard deviation, standard error of measurement, and examination cut score;

(B) number of examinations administered;

(C) number and percentage of candidates passing the examination;

(D) number of personal validation questions used;

(E) number of examinations discontinued due to incorrect responses to personal validation questions; and

(F) statistics describing the performance of each item used on the examinations administered during the six month period.

(i) Certified food manager certificates.

(1) General certificate issuance. Certificates shall be issued by the department – approved examination provider. Candidates whose certificates are issued after successful passage of a department-approved examination shall be deemed to meet the requirements for food manager certification.

(2) Certificate period. A certified food manager certificate issued by a department-approved examination provider under this section shall comply with the *CFP Standards for Accreditation of Food Protection Manager Certification Programs*, Section 7.3, Effective Date of Certificate, as amended, 2008, at <http://www.foodprotect.org/managers-certification/>.

(3) Recertification. Candidates may become recertified by passing a department-approved examination.

(j) Department certificates.

(1) Two-year renewal certificate. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, shall be renewed every two years and may be renewed two times.

(2) Department certificate replacement. An individual requesting a certified food manager certificate replacement shall submit a completed written application to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(k) Department certificate fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees shall be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:

(1) Two-year renewal certificate fee. The fee for a two-year renewal certificate shall be \$10.

(2) Replacement certificate fee. A replacement certificate fee for the department examination shall be \$15.

(3) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(l) Licensing of certified food manager licensee. The department shall issue a license to a certified food manager licensee meeting the requirements of this section. A license issued under these rules shall expire two years from the date of issuance. A license is not transferable on change of ownership, name, or examination site location.

(1) Application. Persons wishing to apply for a certified food manager license shall submit a completed application to the department.

(2) Security agreement. The licensee shall submit a signed security agreement that individual examination items, examination item banks, certified food manager certification examinations, examination answer sheets, and candidate scores shall be secure at all times, and during administration that the examinations shall remain secure.

(3) Certified food manager licensee fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (n)(1) of this section.

(4) Certification examination. Department-approved examination(s) utilized by the certified food manager licensee shall be designated on the application.

(5) Number of examination sites utilized. The license application shall indicate the number of examination sites to be utilized under the certified food manager license.

(m) Responsibilities of licensee.

(1) Compliance with food manager laws and rules. The licensee is responsible for compliance with applicable food manager laws and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (n) of this section.

(n) Required fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees shall be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:

(1) Certified food manager licensee fee. Certified food manager licenses shall be valid for a two-year period and fees shall be based on the number of examination sites at which the licensee administers the examinations based on the following scale:

(A) one site:

(i) the two-year license fee for initial, renewal, or change of ownership shall be \$400; and

(ii) a license fee for a program amendment during the current licensure period shall be \$200;

(B) two to ten sites:

(i) the two-year license fee for initial, renewal, or change of ownership shall be \$1,000; and

(ii) a license fee for a program amendment during the current licensure period shall be \$500;

(C) over ten sites:

(i) the two-year license fee for initial, renewal, or change of ownership shall be \$2,000; and

(ii) a license fee for a program amendment during the current licensure period shall be \$1,000.

(2) Late fee. A certified food manager licensee submitting a completed renewal application to the department after the expiration date shall pay an additional \$100 as a late fee.

(3) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(o) Certified food manager licensee registry. The department shall maintain a registry of all certified food manager licensees. The registry shall be made available on the department website.

(p) Department audits. Audits of certified food manager licensees may be conducted to assess compliance with these rules. Audits may be based on analysis of data compiled by the department. Licensees shall allow personnel authorized by the department access for the purposes of an audit.

(q) Denial, suspension and revocation of certified food manager license. A certified food manager license may be denied, suspended or revoked for the following reasons:

- (1) breach of the security agreement;
- (2) delinquency in payment of fees as described in this section; or
- (3) violation of the provisions of this section.

(r) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(s) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:

- (A) record the suspension of the license in the department's records;
- (B) report the suspension as appropriate; and
- (C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (j) and (k) of this section are met.

~~Subchapter K. Texas Food Establishments.~~

~~§229.172. Accreditation of Certified Food Management Programs.~~

~~(a) Purpose. This section is intended to provide the framework for accrediting manager level food safety programs in accordance with the Texas Health and Safety Code (HSC), Chapter 438, Subchapter D. A uniform standard governing the accreditation of food safety programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education incurred when food establishment managers work in multiple regulatory jurisdictions. Education of the food establishment manager provides more qualified personnel, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.~~

~~(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.~~

~~(1) Accredited—A program approved by the department that meets the standards set forth in this section.~~

~~(2) Alternative training methods—Training other than classroom, including but not limited to distance learning, computerized training programs, and correspondence courses.~~

~~(3) ANSI-CFP Program Accreditation—The American National Standard Institute (ANSI) and the Conference for Food Protection (CFP) accredits programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.~~

~~(4) Certificate—The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.~~

~~(5) Certification—The process whereby a certificate is issued.~~

~~(6) Certified food manager—A person who has demonstrated that they have the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.~~

~~(7) Certified food management program—A program accredited by the department that provides food safety education for food establishment managers and administers an approved examination for certification or recertification purposes.~~

~~(A) Certification program—A program whose course work consists of a minimum of 14 hours of instruction on food safety topics which may include traditional or alternative methods of training, including distance education, and at least a one-hour proctored department approved examination.~~

~~(B) Recertification program—A program whose course work consists of six hours of instruction on food safety topics, which may include traditional or alternative methods of training, including distance education, and a department approved proctored examination.~~

~~(8) Continuing education—Documented professional education or activities that provide for the continued proficiency of a certified food management program instructor.~~

~~(9) Department—Department of State Health Services.~~

~~(10) Examination administrator—An individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.~~

~~(11) Food—A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.~~

~~(12) Food establishment—~~

~~(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:~~

~~(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and~~

~~(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.~~

~~(B) Food establishment includes:~~

~~(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and~~

~~(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.~~

~~(C) Food establishment does not include:~~

~~(i) an establishment that offers only prepackaged foods that are not potentially hazardous;~~

~~(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;~~

~~(iii) a food processing plant;~~

~~(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;~~

~~(v) an area where food that is prepared as specified in subparagraph (C)(iv) of this paragraph is sold or offered for human consumption;~~

~~(vi) a Bed and Breakfast Limited facility as defined in these rules;~~
or

~~(vii) a private home that receives catered or home-delivered food.~~

~~(13) Law—Applicable local, state and federal statutes, regulations and ordinances.~~

~~(14) Licensee—The individual, corporation or company that is licensed by the department to operate certified food management programs.~~

~~(15) Person—An association, corporation, individual, partnership or other legal entity, government or governmental subdivision or agency.~~

~~(16) Proctor—The examination administrator or a person who is designated to assist the examination administrator.~~

~~(17) Psychometric—Scientific measurement or quantification of human qualities, traits or behaviors.~~

~~(18) Qualified instructor—An individual whose educational background and work experience meet the requirements for approval as a qualified food management program instructor as described in this section.~~

~~(19) Reciprocity—Acceptance by state and local regulatory authorities of a Department approved food manager certificate.~~

~~(20) Regulatory authority—The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.~~

~~(21) Secure—Access limited to the certified food manager licensee or examination administrator.~~

~~(22) Single entity—A corporation that educates only its own employees.~~

~~(23) Sponsor—An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.~~

~~(24) Traceable means—A method of submitting documents, which can be tracked in the event of loss or delay.~~

~~(25) Two Year Renewal Certificate—The certificate issued by the department from May 6, 2004 to April 24, 2008, verifying that a certified food manager has completed the application and submission of fees for renewal of a department issued certificate.~~

~~(c) Certified food manager.~~

~~(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:~~

~~(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;~~

~~(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;~~

~~(C) coordinating training, supervising or directing food preparation activities, and taking corrective action as needed to protect the health of the consumer;~~

~~(D) training the food establishment employees on the principles of food safety; and~~

~~(E) conducting in house self inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.~~

~~(2) Certification by training and food safety examination. To be certified, a food manager must complete an accredited certification or recertification program and pass an examination that has been administered through a department accredited food management program.~~

~~(3) Certificate reciprocity. Department issued food management certificates shall be recognized statewide by regulatory authorities as the only valid proof of successful completion of a department accredited food management course.~~

~~(4) Certificate availability. The original food manager certificate shall be conspicuously posted at each food establishment.~~

~~(d) Licensing of certified food management program licensee. The department shall issue a license of accreditation to each certified food management program licensee who has demonstrated compliance with this section. A license issued under these rules will expire two~~

years from the date of issuance. This license is not transferable on change of ownership, name, or site location.

~~(1) Application. A person wishing to apply for a certification or recertification certified food management program license shall submit a completed application to the department.~~

~~(2) Certified food management program license fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (p)(1) of this section.~~

~~(3) Examination security agreement. The licensee shall submit a signed security agreement for each examination administrator using a department examination.~~

~~(4) Sponsor. The licensee may designate a program sponsor as the person responsible for the administrative management of the program.~~

~~(5) Qualified instructor. A list of all qualified food management program instructors who plan to teach an accredited certification or recertification course shall be provided to the department. A completed instructor application, along with other necessary documentation must be submitted for all non-qualified instructors.~~

~~(6) Training methods. Training methods shall be designated on the application. Documentation must be provided to the department verifying that the time required to complete a training program is equivalent to 14 hours of training for certification and six hours for recertification.~~

~~(7) Certification examination. Department approved examination(s) utilized by the certified food protection management programs shall be designated on the completed application.~~

~~(e) Licensing of single entity certified food management programs. In addition to the licensing requirements as specified in subsection (d) of this section, a corporation wishing to use a single entity option, which defers course length and topic requirements as specified HSC, §438.043(a), shall submit to the department:~~

~~(1) a copy of the course guide; and~~

~~(2) an outline of each topic and sub-topics.~~

~~(f) Responsibilities of a licensee.~~

~~(1) Compliance with certified food management program law and rules. The licensee is responsible for compliance with applicable certified food management program law and rules.~~

~~(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (p) of this section.~~

~~(3) Certified food management program course content. All food management programs must be taught utilizing the training and time requirements in Health and Safety Code (HSC), §438.043(1), (2), and (3).~~

~~(4) Change of sponsor. The licensee shall notify the department in writing of the name of the new program sponsor.~~

~~(5) Change of examination administrator. The licensee shall submit a signed security agreement for each new examination administrator prior to administering the department examination. New examination administrators must receive instruction on administrative responsibilities for examination security and processing.~~

~~(6) Change of qualified instructor. The licensee shall ensure that only a department qualified instructor serves as the instructor for the food management program. All new instructors must complete the application for new instructors that must be submitted by the licensee to the department with the applicable documentation. All new instructors must receive instruction on the applicable law and rules and administrative responsibilities.~~

~~(7) Submission of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be submitted to the department by traceable means. The completed answer sheets must be received by the department within seven working days of the examination date.~~

~~(g) Requirements for qualification of instructors. The instructors for all food management programs shall be department qualified prior to teaching a class. The instructors for all certified food management programs shall meet the qualifications in these rules. Instructors meeting these qualifications shall be approved for the two-year permit term of the certified food management program licensee. The completed application form shall be submitted to the department through the accredited certified food management program licensee.~~

~~(1) New instructors. A completed application for new instructors must be submitted by the program licensee to the department with the following documentation:~~

~~(A) the completed and signed application form;~~

~~(B) a copy of a valid food management certificate; and~~

~~(C) verification of education or experience in food safety documented by one of the following:~~

~~(i) an associate or higher college degree from an accredited institution in a major related to food safety or environmental health, evidenced by a copy of the candidate's diploma or transcript;~~

~~(ii) five years of food establishment work experience as a food manager verified in an attached resume; or~~

~~(iii) two years of regulatory food inspection experience verified in an attached resume.~~

~~(2) Nationally accredited program instructors. Nationally accredited program instructors who have met the minimum standards as set forth by this section shall be given reciprocity when instructing and administering an ANSI-CFP Program Accreditation examination.~~

~~(h) Responsibilities of qualified instructors.~~

~~(1) Compliance with certified food management program law and rules. All qualified instructors are responsible for compliance with applicable certified food management program law and rules.~~

~~(2) Training requirements. All qualified instructors are responsible for instructing the course content as specified in subsection (f)(3) of this section, and meeting the training time requirements as specified in subsection (d)(6) of this section.~~

~~(3) Examination administrator. Instructors serving as the examination administrator must complete an examination security agreement prior to administering a department examination.~~

~~(i) Requirements for the renewal of qualified instructors. In order to renew an instructor's qualification the program licensee must comply with the requirements of this subsection.~~

~~(1) Contact hours for continuing education. Certified food management programs shall submit a renewal application and documentation of five contact hours of continuing education for each instructor during the two year program license period to maintain qualification as a certified food manager program instructor.~~

~~(2) Accepted continuing education topics. Continuing education topics may include areas in food safety or instruction enhancement.~~

~~(3) Verification of continuing education. The following may be used for continuing education:~~

~~(A) a certificate of completion for a course or seminar with the participant's name, course name, date and number of contact hours earned;~~

~~(B) a college transcript with course description; or~~

~~(C) other documentation of attendance as approved by the department.~~

~~(j) Responsibilities of the examination administrators.~~

~~(1) Compliance with certified food management program laws and rules. The examination administrator is responsible for compliance with the certified food management program laws and rules applicable to examination administration.~~

~~(2) Examination security agreement. An examination administrator must complete, sign and date a security agreement and submit to the department through the certified food management program licensee. The department may not issue examinations to an examination administrator who does not have a signed security agreement on file with the department.~~

~~(3) Examination security. The examination administrator shall provide examination security at the examination site. All security measures shall be met and maintained at all times during examination storage, administration and issuance as described in this section.~~

~~(4) Submission of examination booklets and answer sheets. The examination administrator shall submit the examination booklets and answer sheets used for computerized grading via traceable means along with department forms as required. The examination booklets, completed answer sheets and required forms must be received by the department within seven working days of the examination date.~~

~~(5) Examination results. Candidates shall be informed of the process for receiving their certificate upon passing the examination. Candidates shall be informed of the reexamination process, in the event of examination failure.~~

~~(6) Replacement process for candidate certificate. Candidates shall be informed of the process for replacing lost or damaged certificates.~~

~~(k) Certified food manager certificates.~~

~~(1) Certificate issuance. Certified food manager certificates for candidates who complete an accredited program and pass the department examination will be mailed directly to the candidate.~~

~~(2) Certificate period. A certified food manager certificate issued by the department under this section shall be valid for five years from the date of passing the examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.~~

~~(3) Two-year renewal certificate. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, must be renewed every two years and may be renewed two times.~~

~~(4) Recertification. Candidates may become recertified by taking a recertification class and passing a department approved examination, or by passing an examination as described in §229.176(h)(5) of this title (relating to Certification of Food Managers).~~

~~(5) Department certificate replacement. An individual requesting a certified food manager certificate replacement must submit a completed written application to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.~~

~~(6) Certification through single entity corporations. Candidates from accredited single entity corporations will receive food management certificates as described in this section, except that the food management certificate shall:~~

~~(A) clearly indicate that the certificate is for the single entity only;~~

~~(B) be recognized by regulatory authorities for only that single entity; and~~

~~(C) not receive reciprocity or recertification.~~

~~(l) Department examination criteria. The department examination shall meet accepted psychometric standards for reliability, validity and passing score. The department certification and recertification examinations shall consist of 75 statistically valid questions to be administered at one time following the required training which precedes the examination.~~

~~(m) National examination criteria. National food manager examinations recognized by the ANSI-CFP Program Accreditation shall be considered department approved examinations.~~

~~(n) Site requirements for administration of the department examination and national examinations. Examination sites utilizing the department examination or a national examination must comply with all legal requirements for safety, health, and accessibility for all qualified candidates. Accommodations, lighting, space, comfort, and workspace for taking the examination must allow all candidates to perform at their highest level of competency. Requirements at each site include but are not limited to:~~

~~(1) accessibility in accordance with the requirements of the Americans with Disabilities Act must be available for all qualified examinees;~~

~~(2) sufficient spacing between each examinee in the area in which the actual testing is conducted, or other appropriate and effective methods, to preclude any examinee from viewing another candidate's examinations;~~

~~(3) acoustics that allow each examinee to hear instructions clearly, using an electronic audio system if necessary;~~

~~(4) adequate lighting at each examinee's work space for reading fine print; and~~

~~(5) appropriate ventilation and temperature for the health and comfort of examinees.~~

~~(o) Department examination administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination.~~

~~(1) Security procedures shall be in place which protect the examination from compromise at all times. The examinations shall be stored and administered under secure conditions and shall be inventoried prior to and immediately following each administration of an examination. The examination may not be duplicated. Candidates shall have access to the examination only during examination administration.~~

~~(2) There shall be one proctor for every 35 candidates taking the examination. Proctors shall, by picture identification, confirm the accurate identity of each candidate. The examination administrator shall train and supervise the activities of any proctor(s).~~

~~(3) A candidate who speaks English as a second language may use a translation dictionary to translate English into their native language.~~

~~(4) An employee or a non-biased volunteer translator may be used as a translator of languages other than English to administer the examination orally. Translators shall be pre-approved by the examination administrator, and shall not compromise the integrity of the examination or the examination results of the candidate.~~

~~(5) Each candidate's examination results and personal information shall be held confidential. Such information may be made available only to the examinee and to persons designated in writing by the examinee in a dated document containing the examinee's original signature. The signed document must specify the name(s) of specific individuals the information may be released to and the exact information which may be provided. The department shall only release information in writing and only to appropriately designated and identified person(s).~~

~~(6) All completed answer sheets for the department examinations shall:~~

~~(A) be submitted by traceable means, and received by the department within seven working days of the examination date for grading and processing;~~

~~(B) be submitted in a condition acceptable for immediate scanning. Forms requiring extensive correction shall be returned to the examination administrator ungraded; and~~

~~(7) Only the department shall grade the department examination.~~

~~(p) Required fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees must be submitted with the appropriate form that relates to the fee~~

category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. The fees shall be:

~~(1) Certified food manager program license fee for initial, renewal, or change of ownership. A program fee shall be \$600 for a two-year license for each certification or recertification program.~~

~~(2) Certified food manager program amended license fee. Program amendment fees shall be \$300 for each certification or recertification program.~~

~~(3) Examination packet fee. The fee for the department examination shall be \$25 and shall include a manager's certificate valid for five years if the candidate passes the examination. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.~~

~~(4) Two-year renewal certificate fee. The fee for renewal of a two-year certificate issued shall be \$10.~~

~~(5) Replacement certificate. A replacement certificate fee for the department examination shall be \$15.~~

~~(6) Late fee. Certified food manager licensees submitting a completed renewal application to the department after the expiration date shall pay an additional \$100 as a late fee.~~

~~(7) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.~~

~~(q) Department examination related to late fees. Department examinations will not be provided to any licensee that is over 30 days delinquent in renewing a certified food management program license.~~

~~(r) Certified food management program registry. The department shall maintain a program registry of all accredited certification and recertification programs. The registry shall be made available on the department website.~~

~~(s) Department audits. Examination and classroom audits may be conducted to assess program compliance. Licensee shall allow personnel authorized by the department access for the purposes of an audit. Audits may be based on analysis of data compiled by the department.~~

~~(t) Denial, suspension and revocation of program accreditation. An accredited food manager program license may be denied, suspended or revoked for the following reasons:~~

~~(1) a licensee, examination administrator or proctor breaches the security agreement;~~

~~(2) a licensee is delinquent in payment of fees as described in this section; or~~

~~(3) violation of the provisions of this section.~~

~~(u) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.~~

~~(v) Suspension of License Relating to Child Support and Child Custody.~~

~~(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:~~

~~(A) record the suspension of the license in the department's records;~~

~~(B) report the suspension as appropriate; and~~

~~(C) demand surrender of the suspended license.~~

~~(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.~~

~~(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.~~

~~(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.~~

~~(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.~~

~~§229.176. Certification of Food Managers.~~

~~(a) Purpose. This section is intended to provide the framework of certification programs for food managers in accordance with Texas Health and Safety Code (HSC), Chapter 438, Subchapter G. Certification of Food Managers supports demonstration of food safety knowledge, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.~~

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

~~(1) ANSI-CFP Program Accreditation—The American National Standard Institute (ANSI) and the Conference for Food Protection (CFP) accredits programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.~~

~~(2) Certificate—The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.~~

~~(3) Certification—The process whereby a certificate is issued.~~

~~(4) Certified food manager—A person who has demonstrated that he/she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.~~

~~(5) Certified food manager examination—A department approved examination for food manager certification.~~

~~(6) Department—Department of State Health Services.~~

~~(7) Examination administrator—An individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.~~

~~(8) Examination site—The physical location at which the department approved examination is administered.~~

~~(9) Food—A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.~~

~~(10) Food establishment—~~

~~(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:~~

~~(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and~~

~~(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.~~

~~(B) Food establishment includes:~~

~~(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and~~

~~(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.~~

~~(C) Food establishment does not include:~~

~~(i) an establishment that offers only prepackaged foods that are not potentially hazardous;~~

~~(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;~~

~~(iii) a food processing plant;~~

~~(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;~~

~~(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;~~

~~(vi) a Bed and Breakfast Limited facility as defined in these rules;~~
or

~~(vii) a private home that receives catered or home-delivered food.~~

~~(11) Law—Applicable local, state and federal statutes, regulations and ordinances.~~

~~(12) Licensee—The individual, corporation, or company that is licensed by the department to administer a department approved examination for food manager certification and complies with the examination site requirements.~~

~~(13) Nonprofit organization—A civic or fraternal organization, charity, lodge, association, proprietorship or corporation possessing a 501(C) exemption under the Internal Revenue Code; or religious organizations meeting the definition of "church" under the Internal Revenue Code, §170(b)(1)(A)(I).~~

~~(14) Person—An association, corporation, partnership, individual or other legal entity, government or governmental subdivision or agency.~~

~~(15) Personal validation question—A question designed to establish the identity of the candidate taking a certified food manager examination by requiring an answer related to the candidate's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the candidate.~~

~~(16) Proctor—The examination administrator or a person who is designated to assist the examination administrator.~~

~~(17) Psychometric—Scientific measurement or quantification of human qualities, traits or behaviors.~~

~~(18) Reciprocity—Acceptance by state and local regulatory authorities of a department approved food manager certificate.~~

~~(19) Regulatory authority—The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.~~

~~(20) Secure—Access limited to the licensee or examination administrator.~~

~~(21) Traceable means—A method of mailing documents that can be tracked in the event of loss or delay.~~

~~(e) Certified food manager.~~

~~(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:~~

~~(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;~~

~~(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;~~

~~(C) coordinating training, supervising or directing food preparation activities and taking corrective action as needed to protect the health of the consumer;~~

~~(D) training the food establishment employees on the principles of food safety; and~~

~~(E) conducting in house self inspection of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.~~

~~(2) Certification by a food safety examination. To be certified, a food manager must pass a department approved examination or a national examination recognized by the ANSI-CFP Program Accreditation.~~

~~(3) Certificate reciprocity. A certificate issued to an individual who successfully completes a department approved examination shall be accepted as meeting the training and examination requirements under HSC, §438.046(b).~~

~~(4) Certificate availability. The original food manager certificate shall be conspicuously posted at each food establishment.~~

~~(d) Licensing of certified food manager licensee. The department shall issue a license to certified food manager licensees meeting the requirements of this subsection. A license issued under these rules shall expire two years from the date of issuance. A license is not transferable on change of ownership, name, or change of site location.~~

~~(1) Application. Persons wishing to apply for a certified food manager license shall submit a completed application to the department.~~

~~(2) Certified food manager licensee fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (o)(1) of this section.~~

~~(3) Examination security agreement. The licensee shall submit a signed security agreement for each examination administrator using a department examination.~~

~~(4) Certification examination. Department approved examination(s) utilized by the certified food manager licensee shall be designated on the application.~~

~~(5) Number of examination sites utilized. The license application shall indicate the number of examination sites to be utilized under the certified food manager license.~~

~~(e) Responsibilities of licensee.~~

~~(1) Compliance with food manager laws and rules. The licensee is responsible for compliance with applicable food manager laws and rules.~~

~~(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (o) of this section.~~

~~(3) Change of the examination administrator. The licensee shall submit a signed security agreement by a new examination administrator prior to administering the department examination. New examination administrators must receive instruction on administrative responsibilities for examination security and processing, based on the most current department guidelines.~~

~~(4) Submission of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be submitted to the department by traceable means. The completed answer sheets must be received by the department within seven working days of the examination date.~~

~~(f) Responsibilities of department examination administrators.~~

~~(1) Compliance with food manager laws and rules. The examination administrator is responsible for compliance with the food manager laws and rules applicable to examination administration.~~

~~(2) Examination security agreement. An examination administrator must complete, sign and date a security agreement and submit it to the department through the certified food manager licensee. The department may not issue examinations to examination administrators who do not have a signed security agreement on file with the department.~~

~~(3) Examination security. The examination administrator shall provide examination security at the examination site. All security measures specified in this section shall be met and maintained at all times during examination storage, administration and issuance.~~

~~(4) Submission of examination booklets and answer sheets. The examination administrator shall submit the examination booklets and answer sheets used for computerized grading via traceable means along with department forms as required. The examination booklets, completed answer sheets and required forms must be received by the department within seven working days of the examination date.~~

~~(5) Examination results. Candidates shall be informed of the process for receiving their certificate upon passing the examination. Candidates shall be informed of the reexamination process, in the event of examination failure.~~

~~(6) Replacement process for candidate certificate. Candidates shall be informed of the process for replacing lost or damaged certificates.~~

~~(g) Responsibilities for Internet examination providers.~~

~~(1) Compliance with food manager laws and rules. Internet examination providers are responsible for compliance with food manager laws and rules applicable to examination administration.~~

~~(2) Examination Security Agreement. Internet examination providers must submit the department security agreement signed by the certified food manager licensee.~~

~~(3) Examination Security. Candidates taking Internet examinations shall be advised on the application that outside training materials or assistance shall not be used during administration of the examination and that appropriate measures must be taken to assure that the examination is not compromised.~~

~~(h) Certified food manager certificates.~~

~~(1) General certificate issuance. Certificates shall be issued by the department or the organization that administers a department approved examination. Certificates issued after successful passage of a department approved examination shall be deemed to meet the requirements for food manager certification.~~

~~(2) Department certificate issuance. Certified food manager certificates for candidates who pass the department's examination will be mailed directly to the candidate.~~

~~(3) Certificate period. A certified food manager certificate issued by the department shall be valid for five years from the date of passing the examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.~~

~~(4) Two-year renewal certificate. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, must be renewed every two years and may be renewed two times.~~

~~(5) Recertification. Candidates may become recertified by passing a department approved examination.~~

~~(6) Department certificate replacement. An individual requesting a certified food manager certificate replacement must submit a completed written application to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.~~

~~(i) Department examination criteria. The department examination shall meet accepted psychometric standards for reliability, validity and passing score. The department examination shall consist of 75 statistically valid questions to be administered at one time following any voluntary training which may precede the examination.~~

~~(j) National examination criteria. National food manager examinations recognized by the ANSI-CFP Program Accreditation shall be considered department approved examinations.~~

~~(k) Internet examination criteria. Documentation that Internet examination questions meet accepted psychometric standards for reliability, validity, and passing score shall be submitted to the department. Each candidate shall receive a unique form of the examination with regard to question sequence. Internet examinations shall consist of 75 statistically valid questions that are administered at one time following any voluntary training that may precede the examination.~~

~~(l) Site requirements for administration of the department examination and national examinations. Examination sites utilizing the department examination or a national examination must comply with all legal requirements for safety, health, and accessibility for all qualified candidates. Accommodations, lighting, space, comfort, and workspace for taking the examination must allow all candidates to perform at their highest level of competency. Requirements at each site include but are not limited to:~~

~~(1) accessibility in accordance with the requirements of the Americans with Disabilities Act must be available for all qualified examinees;~~

~~(2) sufficient spacing between each examinee in the area where the actual examination is conducted, or other appropriate and effective methods, to preclude any examinee from viewing other candidates' examinations;~~

~~(3) acoustics that allow each examinee to hear instructions clearly, using an electronic audio system if necessary;~~

~~(4) adequate lighting at each examinee's workspace for reading fine print; and~~

~~(5) appropriate ventilation and temperature for the health and comfort of examinees.~~

~~(m) Department examination administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination:~~

~~(1) Security procedures shall be in place, which protect the examination from compromise at all times. The examinations shall be stored and administered under secure conditions and shall be inventoried prior to and immediately following each administration of an examination. The examination may not be duplicated. Candidates shall have access to the examination only during examination administration;~~

~~(2) There shall be one proctor for every 35 candidates taking the examination. Proctors shall, by picture identification, confirm the accurate identity of each candidate. The examination administrator shall train and supervise the activities of any proctor(s);~~

~~(3) A candidate who speaks English as a second language may use a translation dictionary to translate English into their native language;~~

~~(4) An employee or a non-biased volunteer translator may be used as a translator of languages other than English to administer the examination orally. Translators shall be pre-approved by the examination administrator, and shall not compromise the integrity of the examination nor the examination results of the candidate;~~

~~(5) Each candidate's examination results and personal information shall be held confidential. Such information may be made available only to the examinee and to persons designated in writing by the examinee in a dated document containing the examinee's original signature. The signed document must specify the name(s) of specific individuals the information may be released to and the exact information which may be provided. The department shall only release information in writing and only to appropriately designated and identified person(s);~~

~~(6) All completed answer sheets for the department examinations shall:~~

~~(A) be submitted by traceable means, and received by the department within seven working days of the examination date for grading and processing;~~

~~(B) be submitted in a condition acceptable for immediate scanning. Forms requiring extensive correction shall be returned to the examination administrator ungraded; and~~

~~(7) Only the department shall grade the department examination.~~

~~(n) Internet examination administration.~~

~~(1) Registration requirements for Internet examinations. The licensee shall register the candidates and require the candidates to:~~

~~(A) verify their identity;~~

~~(B) provide responses to ten personal validation questions; and~~

~~(C) maintain examination security.~~

~~(2) Licensee examination disclosure information. The licensee shall inform the candidate that:~~

~~(A) reference materials shall not be used during the examination;~~

~~(B) the candidate shall not receive assistance from anyone during the examination; and~~

~~(C) examination questions may not be replicated in any fashion.~~

~~(3) Personal validation questions. The licensee shall verify a candidate's identity throughout the examination. The personal validation process must include the following elements:~~

~~(A) a minimum of five personal validation questions selected from the ten questions provided during registration shall be incorporated at various times during the examination;~~

~~(B) the personal validation questions must be randomly generated with respect to time and order;~~

~~(C) the same personal validation questions shall not be asked more than once during the same examination; and~~

~~(D) the examination session shall cease and the candidate shall be automatically exited from the examination if a candidate answers a personal validation question incorrectly.~~

~~(4) System support. The licensee of an approved Internet examination must include the following system capabilities and security measures:~~

~~(A) capability to browse or review previously completed examination questions;~~

~~(B) capability to navigate logically and systematically through the examination;~~

~~(C) technical support personnel for Internet examination issues;~~

~~(D) security of personal candidate information in transit and at rest;~~

~~(E) a back-up and disaster recovery system capability; and~~

~~(F) assurance that examination data is maintained in a secure and safe environment and readily available to the department.~~

~~(5) Reporting requirements for non-proctored Internet examination administrators. Internet examination administrators who administer examinations in non-proctored locations shall submit a semi-annual report to enable the department to evaluate examination security and system performance. The report shall include:~~

~~(A) statistical data to enable measurement of central tendency, ranges of examination scores, standard deviation, standard error of measurement, and examination cut score;~~

~~(B) the number of personal validation questions used; and~~

~~(C) the number of examinations discontinued due to incorrect responses to personal validation questions.~~

~~(6) Time allotment for non-proctored Internet examination providers. Time allotted for administration of non-proctored examinations shall not exceed 90 minutes.~~

~~(e) Required fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees must be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:~~

~~(1) Certified food manager licensee fee. Certified food manager licensee fees shall be valid for a two-year period and shall be based on the number of sites at which the certified food manager licensee administers the examinations based on the following scale:~~

~~(A) one site:~~

~~(i) the two-year license fee for initial, renewal, or change of ownership shall be \$400; and~~

~~(ii) a license fee for a program amendment during the current licensure period shall be \$200;~~

~~(B) two to ten sites:~~

~~(i) the two-year license fee for initial, renewal, or change of ownership shall be \$1,000; and~~

~~(ii) a license fee for a program amendment during the current licensure period shall be \$500;~~

~~(C) over ten sites:~~

~~(i) the two-year license fee for initial, renewal, or change of ownership shall be \$2,000; and~~

~~(ii) a license fee for a program amendment during the current licensure period shall be \$1,000.~~

~~(2) Examination packet fee. The fee for a department examination packet shall be \$25 and shall include a manager's certificate valid for five years if the candidate passes the examination. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.~~

~~(3) Two-year renewal certificate fee. The fee for a two-year renewal certificate shall be \$10.~~

~~(4) Replacement certificate fee. A replacement certificate fee for the department examination shall be \$15.~~

~~(5) Late fee. A certified food manager licensee submitting a completed renewal application to the department after the expiration date shall pay an additional \$100 as a late fee.~~

~~(6) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.~~

~~(p) Department examination related to late fees. Department examinations will not be provided to any licensee that is over 30 days delinquent in renewing a license.~~

~~(q) Certified food manager licensee registry. The department shall maintain a registry of all licensed certified food manager licensees. The registry shall be made available on the department website.~~

~~(r) Department audits. Audits of certified food manager licensees shall be conducted to assess compliance with these rules. Audits may be based on analysis of data compiled by the department. Licensees shall allow personnel authorized by the department access for the purposes of an audit.~~

~~(s) Denial, suspension and revocation of certified food manager license. A certified food manager license may be denied, suspended or revoked for the following reasons:~~

~~(1) a licensee, examination administrator, or proctor breaches the security agreement;~~

~~(2) a licensee is delinquent in payment of fees as described in this section; or~~

~~(3) violation of the provisions of this section.~~

~~(t) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.~~

~~(u) Suspension of License Relating to Child Support and Child Custody.~~

~~(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:~~

~~(A) record the suspension of the license in the department's records;~~

~~(B) report the suspension as appropriate; and~~

~~(C) demand surrender of the suspended license.~~

~~(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.~~

~~(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.~~

~~(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.~~

~~(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.~~