

**Department of State Health Services
Agenda Item for State Health Services Council
October 10-11, 2007**

Agenda Item Title:

Amendment of 25 TAC, §229.172, Rule Relating to Accreditation of Certified Food Management Programs

Amendment of 25 TAC, §229.176, Rule Relating to Certification of Food Managers

Amendment of 25 TAC, §229.177, Rule Relating to Certification of Food Managers in Areas Under the Department of State Health Services Permitting Jurisdiction

New 25 TAC, §229.178, Rule Relating to Accreditation of Food Handler Programs

Agenda Number: 4-1

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The Food Establishment Group accredits certification and training programs for food managers. Legislation was passed during the 80th regular session of the Texas Legislature that required revision of the rules for certified food managers training and examination sites. Legislation was also passed establishing voluntary accreditation programs for food handler training classes.

Summary: Section 229.172 concerning the accreditation of certified food management programs, and §229.176 concerning the certification of food managers are being amended to authorize issuance of the five-year certified food manager certificates. Section 229.177 concerns the certification of food managers in areas under the Department of State Health Services permitting jurisdiction that is being amended to reflect the legacy name change to the Department of State Health Services. Section 229.178 concerning the accreditation of food handler programs is a new rule defining the basic food safety training or education required to be included in a course curriculum. In addition, §§229.172, 229.176, and 229.177 comply with the agency four-year review in Government Code, §2001.039.

Summary of Stakeholder Input to Date (including advisory committees): The proposed rules will be made available on the Food Establishments website (www.dshs.state.tx.us/foodestablishments). Stakeholders, programs, and staff will be provided notification of the proposed rules for their review and comment. Section 229.178 is a new rule and was reviewed by a workgroup comprised of local health departments, trade associations, and industry.

Proposed Motion: Motion to recommend HHSC approval to adopt rules contained in agenda item # 4-m.

Agenda Item Approved by: Kathryn C. Perkins, R.N., M.B.A.

Presented by: Deborah Marlow **Title:** Group Manager, Food Establishments Group

Program/Division: Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services

Contact Name/Phone: Deborah Marlow, 834-6753

Date Submitted
7/19/07

TITLE 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 229. Food and Drug

Subchapter K. Texas Food Establishments

Amendment §229.172. Accreditation of Certified Food Management Programs.

Amendment §229.176. Certification of Food Managers.

Amendment §229.177. Certification of Food Managers in Areas Under the Department of State Health Services [Texas Department of Health] Permitting Jurisdiction

New §229.178. Accreditation of Food Handler Programs

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the amendments to §§229.172, 229.176, and 229.177 concerning the accreditation of certified food management programs and the certification of food managers, and new §229.178 concerning the accreditation of food handler programs.

BACKGROUND AND PURPOSE

The purpose of the amendments to §§229.172, and 229.176 is to allow the issuance of the five-year certified food manager certificate in accordance with House Bill 1064 of the 80th Legislature that exempts the food manager certificate from the two year renewal required by Health and Safety Code, §12.0112, and certificate fees are amended to reflect the five-year renewal period.

The purpose of the amendment to §229.177 is to reflect the agency name change to the Department of State Health Services and correct a rule reference. The purpose of the new §229.178 is to define the basic food safety training or education required to be included in a department accredited food handler course curriculum.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.172, 229.176, and 229.177 have been reviewed and the department has determined that reasons for adopting these sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §229.172 concerns the accreditation of food management programs, to authorize issuance of five-year Certified Food Manager certificates. The recertification examination is amended to be consistent with §229.176, which establishes a 75 question examination for recertification. The amendment to §229.176 concerns the certification of food managers to authorize issuance of five-year Certified Food Manager certificates. Additional amendments are for consistency with the 2006 Texas Food Establishment Rules listed in

Subchapter K. Minor amendments have also been made to correct language, punctuation, and to provide clarity.

The amendment to §229.177 concerns the certification of food managers in areas under the department's permitting jurisdiction. The agency name is changed to reflect the Department of State Health Services and correct one rule reference update.

New §229.178 is based on Senate Bill 552 of the 80th Legislature regarding the accreditation of basic food safety education and training programs for food handlers. This bill requires the Health and Human Services Commission to adopt rules to define the basic food safety training or education required to be included in a course curriculum. The basic course may not exceed two hours in length and may require a participant to achieve a passing score on an examination.

FISCAL NOTE

Susan Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for the first five-year period that §§229.172, and 229.176 are in effect, there will be an increase of \$175,795 each year in the fiscal implications to state government as a result of issuing five-year certificates. For the first five-year period that §229.178 is in effect, there will also be an increase in fiscal implications as businesses or persons apply for accreditation of food handler programs. It has been determined that there will be an increase of \$9,000 the first year, \$3,000 the second year, \$12,000 the third year, \$6,000 the fourth year, and \$15,000 the fifth year. There is no fiscal implications as a result of §229.177. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated costs to small businesses or micro-businesses who elect to voluntarily comply with the sections as proposed. There will be a new licensing fee for businesses or persons who want to have their food handler training program accredited by the department under §229.178. The probable economic cost to persons requesting this accreditation is \$300 per year. There is no negative impact on local employment

ECONOMIC IMPACT STATEMENT

Regarding §§229.172, 229.176, and 229.178, the purpose of the rules is to provide the framework for accrediting food manager and food handler level food safety programs in accordance with the Texas 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.

REGULATORY FLEXIBILITY ANALYSIS

Sections 229.172 and 229.176 establish the standards for the education or the demonstration of knowledge for the 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. This allows programs a choice of state or national examination certification to meet the needs of their clients.

Section 229.178 establishes the standards for the education of the food handlers that also provide 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 is voluntary, and allows programs to accredit their program and provide reciprocity for students.

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 practices and increased knowledge of food safety within the food service industry, resulting in a lesser risk of becoming ill from a foodborne illness.

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 amendments and new rule 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 of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512)-834-6753, extension 2138, 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/foodestablishments). 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 amendments and new rule 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; §438.106, for certification of food managers, and §438.043, for basic food safety accreditation, and §437.0076(b), for 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 review of the rules implements Government Code, §2001.039.

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

Legend: (Proposed Amendments)

Single-Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for designated subdivisions

§229.172. Accreditation of Certified Food Management Programs.

(a) (No change.)

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

(1) - (2) (No change.)

(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) [(3)] 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) [(4)] Certification--The process whereby a certificate is issued.

(6) [(5)] 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) [(6)] 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.

[(7) Certified food management program licensee--The individual, corporation or company that is licensed by the department to operate certified food management programs.]

[(8) Certified food management program sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.]

[(9) Conference for Food Protection--An independent national voluntary nonprofit organization to promote food safety and consumer protection.]

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

(9) [(11)] Department--Department of State Health Services [The Texas Department of Health].

(10) [(12)] 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) [(13)] 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

[(14) Food establishment - An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; 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; remote catered operations; conveyance used to transport people; institution or food bank 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.]

[(A) The term includes: 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; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments where consumption is on or of the premises; and regardless of whether there is a charge for the food.]

[(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; 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; a bed and breakfast

limited facility as defined in §229.162(4)(A) of this title relating to Definitions; or a private home.]

(13) [(15)] 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) [(16)] Person--An association, corporation, individual, partnership or other legal entity, government or governmental subdivision or agency.

(16) [(17)] Proctor--The examination administrator or a person who is designated to assist the examination administrator.

(17) [(18)] Psychometric--Scientific measurement or quantification of human qualities, traits or behaviors.

(18) [(19)] Qualified **[food management program]** 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.

[(20)] Renewal Certificate--The certificate issued by the department verifying that a certified food manager has completed the application and submission of fees for renewal of a department issued certificate.]

(19) [(21)] Reciprocity--Acceptance by state and local regulatory authorities of a Department approved food manager certificate.

(20) [(22)] Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment **[The state or local enforcement body or authorized representative having jurisdiction over the food establishment].**

(21) [(23)] Secure--Access limited to the certified food manager licensee or examination administrator.

(22) [(24)] 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) [(25)] Traceable means--A method of submitting **[mailing]** 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) (No change.)

(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 **[an]** 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) (No change.)

(4) Sponsor **[Certified food management program sponsor]**. The licensee may designate a program sponsor as the person responsible for the administrative management of the program.

(5) Qualified **[Certified food management program]** instructor. A list of all qualified **[department certified]** food management program instructors who plan to teach an accredited certification or recertification course shall be provided to the department. A completed **[An]** instructor application, along with other necessary documentation must be submitted for all non-qualified **[non-certified]** 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 **[an alternative]** 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) (No change.)

(f) Responsibilities of a **[certified food management program]** 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) Change of ownership, site location, or change of name. A new licensing application, to include non-refundable fee(s) as described in this section, shall be submitted prior to change(s) including, but not limited to license change of ownership, site location, or change of name.]

~~(3)~~ [(4)] Certified food management program course content. All food management programs must be taught utilizing **[the course content established in the Conference for Food Protection's Standards for Accreditation of Food Protection Manager Certification Programs, and must meet]** the training and time requirements in Health and Safety Code (HSC), §438.043(1), (2), and (3) **[subsection (d)(6) of this section]**.

~~(4)~~ [(5)] Change of **[program]** sponsor. The licensee shall notify the department in writing of the name of the new program sponsor.

~~(5)~~ [(6)] 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)~~ [(7)] Change of qualified **[food management]** instructor. The licensee shall ensure that only a department qualified **[food management]** 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)~~ [(8)] Submission **[Mailing]** of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be submitted **[mailed]** 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 **[certified food management program]** 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 **[food management]** instructors. A completed application for new instructors must be submitted by the program licensee to the department with the following documentation:

(A) – (C) (No change.)

(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 [a Conference for Food Protection accredited] examination.

(h) Responsibilities of qualified [certified food management program] instructors.

(1) (No change.)

(2) Training requirements. All qualified instructors are responsible for instructing the course content as specified in subsection ~~(f)(3)~~ **[(f)(4)]** of this section, and meeting the training time requirements as specified in subsection (d)(6) of this section.

(3) (No change.)

(i) Requirements for the renewal of qualified **[food management program]** 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 completed 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) – (3) (No change.)

(j) Responsibilities of the examination administrators.

(1) (No change.)

(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) (No change.)

(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.

[(4) Mailing answer sheets. Answer sheets used for computerized grading shall be mailed to the department by traceable means. The completed answer sheets must be received at the department within seven working days of the examination date.]

(5) – (6) (No change.)

(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 **[at the address provided on the computerized grading sheet].**

(2) Certificate period. A certified food manager certificate issued by the department under this section shall be valid for five [two] 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 [Certificate renewal]. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, [Department] must be renewed every two years and may be renewed two times **[without retaking the examination prior to recertification]**.

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

[(6) Expired certificates. Certified food managers whose certification has expired shall complete an accredited certification course and pass the final examination.]

(6) [(7)] 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 [**examination**] shall consist of 75 statistically valid questions to be administered at one time following the required training which precedes the examination. **[The department recertification examination shall consist of 50 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 [**Conference for Food Protection**] shall be considered department approved examinations. **[Examination administrators for national examinations must implement and maintain all of the administrative procedures as outlined in the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.]**

(n) (No change.)

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

(1) – (5) (No change.)

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

(A) be submitted [**mailed**] 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) (No change.)

(p) Required fees. All fees are payable to the Department of State Health Services [**Texas Department of Health**] 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) [(2)] Examination packet fee. The fee for the department examination shall be ~~\$25~~ **[\$10.00]** and shall include a manager's certificate valid for five **[two]** 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) [(3)] Two-year renewal **[Renewal]** certificate fee. The fee for **[a]** renewal of a two-year certificate issued shall be \$10.

(5) [(4)] Replacement certificate. A replacement certificate fee for the department examination shall be \$15 **[\$10]**.

(6) [(5)] 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) [(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.

(q) - (r) (No change.)

(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. **[Examination and classroom audits shall be conducted to assess program compliance. 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)] an average quarterly candidate failure rate in any one quarter of 25% or higher on examinations;

(1) [(2)] a licensee, examination administrator or proctor breaches the security agreement;

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

(3) [(4)] violation of the provisions of this section.

(u) (No change.)

(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) (No change.)

(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) [(1)] 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) [(2)] Certification--The process whereby a certificate is issued.

(4) [(3)] 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.

[(4) Certified food manager licensee--The individual, corporation, or company that is licensed by the department to administer a department approved examination for food manager certification and who complies with the examination site requirements.]

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

[(6) Conference for Food Protection - An independent national voluntary nonprofit organization promoting food safety and consumer protection.]

(6) [(7)] Department--Department of State Health Services [**The Texas Department of Health**].

(7) [(8)] Examination administrator--An [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) [(9)] Examination site--The physical location at which the department approved examination is administered.

(9) [(10)] 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) Food establishment - An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; 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; remote catered operations; conveyance used to transport people; institution or food bank 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.]

[(A) The term includes: 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; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food

establishments where consumption is on or off the premises; and regardless of whether there is a charge for the food.]

[(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; 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; a bed and breakfast limited facility as defined in §229.162(4)(A) of this title.]

(11) [(12)] 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) - (18) (No change.)

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

(20) - (21) (No change.)

(c) Certified food manager.

(1) (No change.)

(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 [**Conference for Food Protection**].

(3) – (4) (No change.)

(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 [**an**] 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) - (5) (No change.)

(e) Responsibilities of **[certified food manager]** 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 ownership, site location, or change of name. A new licensing application package, to include non-refundable fee(s) as described in this section, shall be submitted prior to a change of licensee ownership, or site location, or change of name.]

(3) [(4)] 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.

[(5) Examination administration. The licensee shall directly administer the department approved examination.]

(f) Responsibilities of department examination administrators.

(1) – (3) (No change.)

(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.

[(4) Mailing answer sheets. Answer sheets used for computerized grading shall be mailed to the department by traceable means. The completed answer sheets must be received at the department within seven working days of the examination date.]

(5) – (6) (No change.)

(g) (No change.)

(h) Certified food manager certificates.

(1) (No change.)

(2) Department certificate issuance. Certified food manager certificates for candidates who pass the department's examination will be mailed directly to the candidate **[at the address provided on the computerized grading sheets]**.

(3) Certificate period. A certified food manager certificate issued by the department shall be valid for five **[two]** 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 **[Certificate renewal]**. 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 **[without retaking the examination prior to recertification]**.

(5) (No change.)

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

(i) (No change.)

(j) National examination criteria. National food manager examinations recognized by the ANSI-CFP Program Accreditation **[Conference for Food Protection]** shall be considered department approved examinations. **[Examination administrators for national examinations must implement and maintain all of the administrative procedures as outlined in the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.]**

(k) - (l) (No change.)

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

(1) – (5) (No change.)

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

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

(B) (No change.)

(7) (No change.)

(n) (No change.)

(o) Required fees. All fees are payable to the Department of State Health Services **[Texas Department of Health]** 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;

[(A) one site - \$400;]

(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;

[(B) two to ten sites - \$1,000; or]

(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.

[(C) over ten sites - \$2,000.]

(2) Examination packet fee. The fee for a department examination packet shall be ~~\$25~~ **[\$10]** and shall include a manager's certificate valid for ~~five~~ **[two]** 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 **[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~~ **[\$10]**.

(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) (No change.)

(p) - (q) (No change.)

(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) - (t) (No change.)

(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.

§229.177. Certification of Food Managers in Areas Under the Department of State Health Services [Texas Department of Health] Permitting Jurisdiction.

(a) - (b) (No change.)

(c) Food manager certification exemptions. The following food establishments are exempt from the requirements in subsection (b) of this section:

(1) - (2) (No change.)

(3) establishments that do not prepare or handle exposed potentially hazardous foods as defined in §229.162(74) [~~§229.162(66)~~] of this title (relating to Definitions); or

(4) (No change.)

(d) - (f) (No change.)

Legend: (Proposed New Rule)

Regular Print = Proposed new language

§229.178. Accreditation of Food Handler Programs.

(a) Purpose. This section is intended to provide the framework for accrediting food safety education or training programs for food handlers in accordance with the Health and Safety Code (HSC), Subchapter D, Chapter 438, §438.0431. A uniform standard governing the accreditation of food handler programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education incurred when food handlers work in multiple regulatory jurisdictions. Education of the food handlers provides more qualified employees, 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 food handler program--A program approved by the department that meets the standards set forth in this section.

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

(3) 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.

(4) 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;

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

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

(5) Food handler--A food service employee who works with unpackaged food, food equipment or utensils, or food contact surfaces.

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

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

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

(9) Reciprocity--Acceptance by state and local regulatory authorities of a food handler certificate issued by a department accredited food handler program.

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

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

(c) Food handler education and training program. The department may accredit an education or training program for basic food safety. The program shall include employee knowledge, responsibilities and training as required in the Texas Food Establishment Rules (TFER).

(1) Education or training course curriculum. A food handler training or education course shall include the following basic food safety principles.

(A) Foodborne illness. Instruction on foodborne illness shall include the definition of foodborne illness, the causes and preventive measures, including employee reporting requirements as defined in §229.163 of this title (relating to Management and Personnel).

(B) Good hygienic practices. Instruction on good hygienic practices shall include the procedures as required in §229.163 of this title.

(C) Preventing contamination by employees. Instruction shall include the training as required in §229.164(e)(1)(D) of this title (relating to Food), regarding the training requirements for contact with ready to eat food with their bare hands.

(D) Cross Contamination. Instruction on cross contamination shall include procedures on the prevention of cross-contamination of foods, sanitization methods and corrective actions as required in §§229.164 of this title and 229.165 of this title (relating to Equipment, Utensils, and Linens).

(E) Time and temperature. Instruction shall include time and temperature control of foods to limit pathogen growth or toxin production as required in §229.164 of this title.

(2) Course length. The course length may not exceed two hours.

(3) Course examination. A training or education program may require a participant to achieve a passing score on an examination to successfully complete the course.

(4) Internet programs. A program accredited under this section may be delivered through the Internet.

(d) Food handler certificate.

(1) Certificate period. A food handler certificate issued by an accredited food handler program shall be valid for two years.

(2) Certificate reciprocity. Department accredited food handler program issued certificates shall be recognized statewide by regulatory authorities as the valid proof of successful completion of a department accredited food handler program.

(e) Licensing of an accredited food handler program licensee. The department shall issue a license of accreditation to each certified food handler 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, or site location.

(f) Responsibilities of a licensee.

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

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

(g) Required fees. All fees are payable to the department and are non-refundable. Fees must be submitted with the appropriate completed application 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.

(1) Accredited food handler program license fee for initial, renewal, or change of ownership. A program fee shall be \$600 for a two-year license for each food handler program.

(2) Accredited food handler program amended license fee. Program amendment fees shall be \$300.

(3) Late fee. Accredited food handler program 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.

(h) Certified food handler program registry. The department shall maintain a program registry of all accredited food handler programs. The registry shall be made available on the department website.

(i) Department audits. 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.

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

- (1) a licensee is delinquent in payment of fees as described in this section; or
- (2) violation of the provisions of this section.

(k) 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.

(l) 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 subsection (g) of this section is met.