

Title 25. HEALTH SERVICES
Part 1. TEXAS DEPARTMENT OF HEALTH
Chapter 229. Food and Drug
Subchapter F. Production, Processing, and Distribution of Bottled and Vended Drinking Water
Amendments §§229.81 - 229.91

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§229.81 - 229.91, concerning the production, processing, and distribution of bottled and vended drinking water.

BACKGROUND AND PURPOSE

The amendments are necessary to update vended water sampling requirements and increase the examination fee to cover the cost of administering the Bottled and Vended Water Certified Operator examination to applicants who do not make a passing score, and apply to retake the exam.

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 229.81 - 229.91 have been reviewed and the department has determined the reasons for adopting the sections continue to exist because rules are required by the enabling statute, the department continues to regulate this activity, and persons engaged in the activity are required to comply with the rules.

SECTION-BY-SECTION SUMMARY

An amendment to §229.81 reflects the department name to Department of State Health Services. Amendments to §§229.82, 229.84, 229.87, 229.88, and 229.91 include grammatical corrections to improve sentence structure. An amendment to §229.83 updates language for consistency within the sections concerning water hauling records. An amendment to §229.85 updates examples for labeling and advertising. An amendment to §229.86 changes the sampling frequency from monthly to once every 90-calendar days; revises the name of the unit, phone number, and e-mail address; and deletes the requirement to report coliform negative samples to the department. An amendment to §229.89 increases the reexamination fee from \$25 to \$50. An amendment to §229.90 deletes language relating to a three-year license prior to January 1, 2005, because the department no longer issues three-year licenses, and updates the department name change.

FISCAL NOTE

Julie W. Loera, Manager, Foods Group, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there

will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of approximately \$125 per year. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Loera has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. Persons who fail the Bottled and Vended Water Certified Operator examination and therefore are required to retake the exam will be required to pay an examination fee of \$50, which is an increase of \$25 each time the individual is required to retake the exam. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Loera has also determined that for each of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public health benefits anticipated as a result of enforcing or administering the sections will be a safe drinking water supply from bottled and vended water dispensing devices.

REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Governmental 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 do not restrict or limit an owner’s rights 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 Julie W. Loera, Manager, Foods Group, Environmental and Consumer Safety Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512-834-6670. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services Deputy 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 amendments are proposed under the Health and Safety Code, §§431.241, and 441.003, which provide the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapters 431 and 441; and §12.0111, which requires the department to charge fees for issuing or renewing licenses; and Government Code, §531.0055, 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 amendments affect the Health and Safety Code, Chapters 12, 431, 441, and 1001; Government Code, Chapter 531; and implements Government Code, §2001.039.

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 the designated subdivision

§229.81. General Provisions.

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

(c) Definitions. The following words and terms, when used in this chapter, shall pertain to both bottled and vended water and shall have the following meanings unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Department - Department of State Health Services **[Texas Department of Health]**.

(5) - (18) (No change.)

(d) (No change.)

§229.82. Sampling. Bottled water must be sampled in accordance with the compliance procedures of Title 21, Code of Federal Regulations, Part 129. All required analyses must be performed by a laboratory acceptable to the department, certified by the U.S. Environmental Protection Agency (EPA), or certified by the primacy enforcement authority in any state which has been granted primacy by EPA[,] or certified by a third party organization acceptable to a primacy state.

§229.83. Water Hauling.

(a) (No change.)

(b) A person receiving water transported **[hauled]** by truck or trailer shall test and record the chlorine residual for compliance with the required minimum chlorine residual (30 TAC, §290.44(i)(2)(K)).

(c) Operational records detailing the amount of water received, the source of the water, and the chlorine residual readings, shall be maintained by the person receiving water that has been transported by truck or trailer. **[Operational records shall be maintained by the person receiving water hauled by truck or trailer detailing the amount of water received, the source of the water, and chlorine residual readings.]** The records shall be kept at the receiving facility for a period of two years and be available for inspection upon request.

§§229.84 - 229.86

§229.84. Standards for Microbiological Control. Bottled and vended water production including transporting, processing, packaging, and storage, shall be conducted under such standards **[conditions]** and controls as are necessary to minimize the potential for microbiological contamination of the finished product. These standards [conditions] and controls shall include the following.

(1) - (3) (No change.)

§229.85. Labeling and Advertising.

(a) (No change.)

(b) The label must state the source of all artesian water, spring water, mineral water, well water, or drinking water sold. Source refers to the point of origin. Examples: Brook **[Singing]** Hollow Spring Water from Buck Hollow, Arkansas; drinking water obtained from Austin municipal water supply, Austin, Texas; well water from Bandera, Texas. Except that water processed by distillation, deionization, reverse osmosis, or other suitable process that alters the water's physical properties enabling it to meet the definition of purified as defined in §229.81(c)(11) of this title (relating to General Provisions) is not required to state the source. This exception only applies if all the water used in the finished product is processed to meet the definition of purified.

(c) (No change.)

§229.86. Processing of Vended Water.

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

(c) Service, sampling and records shall meet the following requirements.

(1) (No change.)

(2) The vended water from each water dispensing device shall have a bacteriological analysis conducted a minimum of once every 90 calendar days **[month]** and if required by the department, shall also be analyzed for other physical, chemical, or microbiological parameters.

(A) Sample results reported as coliform positive or unsuitable for analysis shall be submitted by facsimile to the department within 24 hours of receipt of the sample results from a laboratory acceptable to the department. The person shall submit the results to the Foods Group, Policy/Standards/Quality Assurance Unit **[Manufactured Foods Division]** by facsimile at (512) 834-6681 **[719-0263]**, or by e-mail at Feedback.MFD@dshs.state.tx.us **[Feedback.MFD@tdh.state.tx.us]**.

§§229.86 - 229.87

[(B) Sample results reported as coliform negative shall be submitted to the department within ten calendar days of the last day of each month in which the sample(s) were taken. The person shall send the results to the department via mail to the following address: Manufactured Foods Division, Bottled and Vended Water Program, 1100 West 49th Street, Austin, Texas 78756, or via e-mail to Feedback.MFD@tdh.state.tx.us.]

(B) ~~[(C)]~~ The person operating a water dispensing device shall maintain the original of all sample results for a period of two years. The drinking water analyses shall be performed by a laboratory acceptable to the department. **[to perform drinking water analyses, and a]** A copy of the analysis shall be available for review and copying during inspections.

(3) - (4) (No change.)

(5) Methods of testing for maximum contaminant levels (MCLs) for microbiological contaminants in water dispensed from water dispensing devices shall be performed as follows:

(A) (No change.)

(B) the water dispensing device shall be cleaned, sanitized and resampled immediately. Until the sample results are known the device **[machine]** shall remain out of service; and

(C) if after being cleaned and sanitized, the vended water is determined to be unsatisfactory, the machine shall remain out of service until the source of the contamination has been located and corrected and a negative sample obtained. The negative sample result shall be maintained in accordance with paragraph (2)(B) ~~[(2)(C)]~~ of this subsection.

§229.87. Requirements for Approved Sources. Sources in Texas shall comply with the following requirements.

(1) Public water systems. Sources in Texas which are public water systems shall comply with the Texas Health and Safety Code, Chapter 341, Subchapter C, concerning drinking water standards and rules adopted **[thereunder]** by the Texas Commission on Environmental Quality, at 30 Texas Administrative Code (TAC) §§290.101 - 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems), and §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems).

(2) - (3) (No change.)

§§229.88 - 229.90

§229.88. Certificates of Competency. A person may not furnish bottled or vended water to the public or for distribution to the public unless the bottled or vended water operator holds a certificate **[of competency]** under this chapter.

(1) A person may not furnish bottled water to the public or for distribution to the public unless the processing, bottling[,] and distribution of the bottled water is performed by or under the full-time supervision of a bottled and vended water operator who holds a certificate **[of competency]** under this chapter.

(2) A person may not furnish vended water to the public or for distribution to the public unless the processing, bottling[,] and distribution of the vended water is performed by or under the guidance and control of a bottled and vended water operator who holds a certificate **[of competency]** under this chapter.

§229.89. Examination.

(a) After payment of the required fee, an applicant shall pass **[have passed]** a written examination prescribed by the department. To pass the examination for a certificate **[of competency]**, the applicant must achieve a score of 70% or more on the examination.

(1) (No change.)

(2) If the applicant fails the examination, the applicant may repeat the examination 30 days after the failed examination. The applicant must reapply[,] and pay a re-application fee of \$50 [another \$25 application fee, and repeat the examination after a period of 30 days from the last examination].

(b) (No change.)

§229.90. Certification and Renewal Fees.

[(a) This subsection applies to all new and renewal applications received prior to January 1, 2005.]

[(1) Certification fee - \$50.]

[(2) Renewal fee - \$50.]

[(3) A certificate can be obtained by submitting a completed application with the \$50 certification fee and receiving a passing score on the examination. Certificates can be renewed by submitting an application with the \$50 renewal fee. Certificates are valid for up to three years. Certificates will expire on December 31st, within three years of the date of issue. Fees will not be prorated. If the department has not received a completed
§§229.90 - 229.91

application for renewal within 60 days following the expiration date, the certificate holder shall submit a new application and retake the examination.]

(a) [(b)] This subsection applies to all new and renewal applications **[received on or after January 1, 2005]**.

(1) Certification fee - \$100.

(2) Renewal fee - \$100.

(3) A certificate can be obtained by submitting an application with the \$100 certification fee and receiving a passing score on the examination. Certificates can be renewed by submitting a completed application with the \$100 renewal fee. Certificates are valid for two years from the date of issuance or renewal. Certificates expire two years from the date of issuance. Fees will not be prorated. If the department has not received a completed application for renewal within 60 days following the expiration date, the certificate holder shall submit a new application and retake the examination.

(b) [(c)] An applicant or holder of a certificate shall pay the required fee before taking the examination or receiving a certificate **[of competency]**.

(c) [(d)] All fees shall be made payable to the Department of State Health Services **[Texas Department of Health]** and are not refundable.

(d) [(e)] All applicants shall be in compliance with §1.301 of this title (relating to Suspension of License for Failure to Pay Child Support).

§229.91. Suspension, Denial, or Revocation of Certificate.

(a) Basis for suspension. The certificate **[of competency]** shall be suspended if **[it is found that]** the operator practices **[practiced]** fraud or deceit against the department or the public; or fails **[failed]** to use reasonable care, judgment[,], or application of knowledge in the performance of their duties.

(b) Basis for denial. The certificate **[of competency]** shall be denied if it is found:

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

(3) that the operator practiced fraud or deceit; or failed to use reasonable care, judgment[,], or application of knowledge in the performance of their duties.

(c) Basis for revocation. The certificate **[of competency]** shall be revoked if it is found:

§229.91

(1) (No change.)

(2) that the operator obtained the certificate through fraud, deceit[,] or through the submission of incorrect data on the application; or

(3) that the operator practiced fraud and deceit, or failed to use reasonable care, judgment[,] or application of knowledge in the performance of their duties.

(d) (No change.)

(e) Formal hearings. The department shall conduct hearings in accordance with the Administrative Procedure [**Procedures**] Act, Texas Government Code §§2001.051 - 2001.902; and the department's formal hearing procedures in §§1.21, 1.23, 1.25[,] and 1.27 of this title (relating to Formal Hearing Procedures).