

**Department of State Health Services
Agenda Item for State Health Services Council
November 17, 2005**

Agenda Item Title: Amend 25 TAC §§229.111-229.115, Rules Relating to Manufacture, Storage, and Distribution of Ice Sold for Human Consumption, Including Ice Produced at Point of Use.

Agenda Number: 3b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The Policy Standards and Quality Assurance, Foods Group, regulates the manufacture and distribution of ice in the State. The amendments update the requirements for the manufacturing, storage and distribution of ice.

Summary: The rules are being reviewed in accordance with Government Code, §2001.039, the state agency four-year review of rules. These rules concern the manufacture, storage and distribution of ice throughout the State. The amendments provide grammatical revisions to the rules, change the name of the department, and update regulatory references.

Summary of Stakeholder Input to Date (including advisory committees): The Southwest Ice Association was contacted by electronic mail and by telephone.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # 3b.

Agenda Item Approved by: Rick Bays

Presented by: Julie Loera **Title:** Manager

Program/Division: PSQA Foods Group **Contact Name/Phone:** 834-6770, Ext. 2145

Date Submitted

11/02/2005

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 229. Food and Drug

Subchapter G. Manufacture, Storage and Distribution of Ice Sold for Human Consumption,
Including Ice Produced at Point of Use.

Amendments §§229.111 - 229.115

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 §§229.111- 229.115, concerning the manufacture, storage and distribution of ice sold for human consumption, including ice produced at point of use.

BACKGROUND AND PURPOSE

The amendments revise ice manufacturing, storage and distribution requirements; change the name of the department; and update regulatory references that have been changed.

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 229.111 - 229.115 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

Amendments to §229.111, 229.114, and 229.115 reflect grammatical revisions to improve sentence structure. An amendment to §229.112 includes grammatical revisions and provides the department's name change to the Department of State Health Services. An amendment to §229.113 updates the reference to the Texas Natural Resource Conservation Commission with the name change to the Texas Commission on Environmental Quality.

FISCAL NOTE

Julie W. Loera, Manager, Foods Group, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Loera has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. These entities will not be required to alter their business practices in order to comply with the sections as proposed. 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.

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 ice supply from manufacturers and distributors.

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, 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 authorized by the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; 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 rules affect the Health and Safety Code, Chapters 431 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

§229.111. General Provisions. These **[The]** sections **[will]** supplement §§229.181 - 229.184 of this title (relating to Licensure of Food Manufacturers and Food Wholesalers - Including Good Manufacturing Practices and Good Warehousing Practices in Manufacturing, Packing and Holding Human Food)[,] and §§229.211 - 229.222 of this title (relating to Current Good Manufacturing Practice and Good Warehousing Practice in Manufacturing, Packing[,], or Holding Human Food).

§229.112. Definitions. The following words and terms, when used in these sections, **[shall pertain to ice production and shall]** have the following meanings unless the context clearly indicates otherwise.

(1) Approved laboratory--An approved laboratory is one which is 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.

(2) Approved source (when used in reference to a plant's product water or operations water)--A source of water and the water there from, whether it be from a spring, artesian well, drilled well, municipal water supply[,], or any source, that has been inspected and the water sampled, analyzed[,], and found to be safe and sanitary quality according to applicable laws and regulations of State and local government agencies having jurisdiction. The presence in the plant of current certificates or notifications of approval from the government agency or agencies having jurisdiction constitutes approval of the source and the water supply.

(3) Department--Department of State Health Services (DSHS). **[The Texas Department of Health.]**

§229.113. Source Water.

(a) Requirements for approved source. 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 for Environmental Quality **[Texas Natural Resource Conservation Commission]**, at 30 Texas Administrative Code (TAC), §§290.101 - 290.122 (relating to Drinking Water Standards Governing Drinking

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Water Quality and Reporting Requirements for Public Water Supply Systems), and 30 TAC, §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems);

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

(b) (No change.)

§229.114. Labeling of Packaged Ice.

(a) (No change.)

(b) Label information shall include:

(1) (No change.)

(2) the **[an]** accurate declaration of the net weight; and

(3) (No change.)

(c) (No change.)

§229.115. Ice Equipment.

(a) Ice equipment. Equipment used in ice plants or as part of the facilities producing ice at point of use including, but not limited to, portable can fillers, core sucking devices, drop tubes, tank lids, ice cans, ice manufacturing[,], and ice dispensers shall be handled and maintained in such a manner as to prevent contamination. Equipment shall be located away from areas that could cause contamination such as toilets, vestibules[,], and openings to the outside. If at any time equipment is suspected as having been contaminated by improper handling, this equipment shall be sanitized.

(b) Block ice facilities.

(1) (No change.)

(2) Ice storage vaults. Ice storage vaults must be kept under sanitary conditions and shall be maintained in such a condition as to prevent possible flooding of rooms with waste material. All vaults shall be provided with suitable drains. To prevent possible contamination of ice, all accumulations of rust, fungus growth, mold[,], or slime shall be controlled.