

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §290.251. The commission also adopts new §290.261. The amendment to §290.251 is adopted *with changes* to the proposed text as published in the March 15, 2002 issue of the *Texas Register* (27 TexReg 1978). New §290.261 is adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules will implement House Bill (HB) 2403, 77th Texas Legislature, 2001, which amended Texas Health and Safety Code (THSC), Chapter 372, adding §372.004, which requires that appropriate industry trade associations or other entities, by January 31st of each year, report to the commission the number of clothes washing machines imported into the state. Section 372.004 also requires the report to contain a categorization of the clothes washing machines according to four different water consumption factors. The adopted rules do not apply to clothes washing machines with a capacity of more than 3.5 cubic feet or less than 1.6 cubic feet. The first report under §372.004 must be submitted to the commission by January 31, 2003.

SECTION BY SECTION DISCUSSION

Throughout these sections minor grammatical revisions and administrative clarifications are adopted to conform to internal style standards.

Section 290.251, Purpose, Authority, and Definitions, is adopted with changes from the proposal.

Subsection (a) adds reporting requirements for the number of certain commercial or residential clothes washing machines imported into the state. Subsection (c) adds definitions for “Import” and “Water

consumption factor.” The bill only requires that trade associations report on the number of washing machines that are imported into the state; therefore, the commission adopts the definition of “Import” in subsection (c) as “The physical movement of merchandise into the State of Texas, including shipments to distributors, shipments to factory distributing branches, direct factory sales, shipments to retailers, shipments to factory distributing branches, shipments to sales districts, and shipments to factory owned distributing outlets.” The definition of “Water consumption factor” is defined in HB 2403 as the meaning according to 10 Code of Federal Regulations Part 430, Subpart B, Appendix J, as that appendix existed on September 1, 2001. The commission adopts the definition of “Water consumption factor,” which is “The quotient of the total weighted per cycle consumption divided by the capacity of the clothes washer....” The commission also adopts the addition of “clothes washing machines” to the definition of “manufacturer.”

The commission also deletes paragraphs (3) and (4). The definition of “commission” is already included in 30 TAC §3.2(8) and the definition of “executive director” is already included in §3.2(16) and are no longer necessary in Chapter 290. This is a nonsubstantive, strictly administrative change.

New §290.261, Reporting on Clothes Washing Machines, is adopted to specify the reporting requirements for clothes washing machine manufacturers. The adopted new section will include the annual reporting deadlines and the criteria for categorizing the machines by the four water consumption factors.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute.

Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

A major environmental rule means a rule, the specific intent of which, is to protect the environment or reduce risks 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 the state or a sector of the state. The adopted rules do not meet the definition of a major environmental rule because the specific intent of the rulemaking is to implement a statutory directive to compile information regarding the water consumption of certain washing machines imported into the state. Furthermore, due to the limited applicability of this rulemaking, which will only apply to importers of certain washing machines, the adopted rules will not 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 the state or a sector of the state.

In addition, the adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. The adopted rules do not exceed a standard set by federal law. The adoption does not exceed an express requirement of state law because it is in direct

response to HB 2403, and does not exceed the requirements of this bill. This adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because there is no applicable delegation agreement or contract. This adoption does not adopt a rule solely under the general powers of the agency, but rather under specific state law, i.e., HB 2403, THSC, §372.004, which requires the commission to adopt rules which require industry trade associations or other entities to provide specific water consumption information to the commission. Finally, this rulemaking is not being adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. The commission invited public comment on the draft regulatory analysis determination and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission performed a final analysis for these adopted rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to implement HB 2403, which directs that the commission will annually report to the legislature on the water consumption of certain washing machines imported into the state. The legislation from HB 2403 also directs the commission to adopt rules which require industry trade associations or other entities to provide specific water consumption information to the commission. The adopted rules will substantially advance these stated purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not affect private real property because the adopted rules only create recordkeeping and reporting requirements. Therefore, the adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the CMP.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed April 15, 2002. No comments were received regarding the proposal.

STATUTORY AUTHORITY

The amendment is adopted under HB 2403, 77th Legislature, 2001, which requires the agency to adopt rules to implement THSC, §372.004. In addition, the amendment is adopted under Texas Water Code, §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority to carry out its jurisdiction; and §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state.

SUBCHAPTER G: WATER SAVING PERFORMANCE STANDARDS

§290.251, §290.261

§290.251. Purpose, Authority, and Definitions.

(a) Purpose. The purpose of this subchapter is to establish water saving performance standards and labeling requirements for plumbing fixtures; establish labeling requirements for dishwashing machines, lawn sprinklers, and clothes washing machines; and establish reporting requirements for clothes washing machines. This subchapter applies to plumbing fixtures, dishwashing machines, lawn sprinklers, and clothes washing machines that are manufactured, imported, or otherwise supplied for sale in Texas unless the item is manufactured exclusively for sale outside of the state.

(b) Authority. The authority for these sections is Texas Health and Safety Code, Chapter 372, titled *Environmental Performance Standards for Plumbing Fixtures*.

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

(1) **ANSI** - The American National Standards Institute.

(2) **ASME** - The American Society of Mechanical Engineers.

(3) **Import** - The physical movement of merchandise into the State of Texas, including shipments to distributors, shipments to factory distributing branches, direct factory sales, shipments to retailers, shipments to factory distributing branches, shipments to sales districts, and shipments to factory-owned distributing outlets.

(4) **Importer** - A business or individual that brings into the state plumbing fixtures from other countries or states for resale or installation (other than for their own domicile) within the state.

(5) **Major supplier** - A business or individual that provides plumbing fixtures to others for resale or installation (other than for their own domicile) within the state.

(6) **Manufacturer** - Someone who manufactures plumbing fixtures or clothes washing machines.

(7) **Model** - A type or design of a plumbing fixture.

(8) **Order** - A request to purchase plumbing fixtures from a manufacturer, major supplier, or importer.

(9) **Plumbing fixture** - A sink faucet, lavatory faucet, faucet aerator, shower head, urinal, toilet, flush valve toilet, or drinking water fountain.

(10) **Toilet** - A toilet or water closet except a wall-mounted toilet that employs a flushometer valve.

(11) **Water consumption factor** - The quotient of the total weighted per cycle consumption divided by the capacity of the clothes washer, as stated in 10 Code of Federal Regulations Part 430, Subpart B, Appendix J, September 1, 2001.

§290.261. Reporting on Clothes Washing Machines.

(a) A manufacturer who imports one or more clothes washing machines into the state, a trade association representing the manufacturer, or other entities must report the following information to the executive director not later than January 31st of each year:

(1) the number of clothes washing machines imported into the state during the preceding calendar year with a water consumption factor of more than 11;

(2) the number of clothes washing machines imported into the state during the preceding calendar year with a water consumption factor of more than 9.5, but not more than 11;

(3) the number of clothes washing machines imported into the state during the preceding calendar year with a water consumption factor of 9.5 or less; and

(4) the average water consumption factor of all clothes washing machines imported into the state during the preceding calendar year.

(b) A manufacturer has complied with this section if the manufacturer reports the required information to an industry trade association or other entity who reports the required information to the executive director by January 31st of each year.

(c) This section does not apply to a clothes washing machine with a capacity of more than 3.5 cubic feet or less than 1.6 cubic feet.

(d) The first report required by this section shall be submitted to the executive director by January 31, 2003.