

SUBCHAPTER G: WATER SAVING PERFORMANCE STANDARDS
§§290.251 - 290.254, 290.256, 290.260, 290.261, 290.265 - 290.267
Effective April 26, 2010

§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, have the following meanings, unless the context clearly indicates otherwise.

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

(2) Commercial pre-rinse spray valve--A handheld device that is designed and marketed for use with commercial dishwashing and ware washing equipment and that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or ware washer or by hand.

(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 device that receives water, waste, or both and discharges the water, waste, or both into a drainage system. The term includes a kitchen sink, utility sink, lavatory, bidet, bathtub, shower, urinal, toilet, flush valve toilet, or drinking water fountain.

(10) Plumbing fixture fitting--A device that controls and directs the flow of water. The term includes a sink faucet, lavatory faucet, shower head, bath filler, or commercial pre-rinse spray valve.

(11) Pressurized flushing device--A device that contains a valve that:

(A) is attached to a pressurized water supply pipe that is of sufficient size to deliver water at the necessary rate of flow to ensure flushing when a valve is open; and

(B) opens on actuation to allow water to flow into the fixture at a rate and in a quantity necessary for the proper operation of the fixture and gradually closes to avoid water hammer.

(12) Toilet--A water closet.

(13) Water closet--A plumbing fixture that has a water containing receptor that receives liquid and solid body waste and, on actuation, conveys the waste through an exposed integral trap seal into a drainage system.

(14) 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.

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§290.252. Design Standards.

(a) A person may not sell, offer for sale, distribute, or import into the State of Texas a plumbing fixture for use in the state unless the plumbing fixture meets the water saving performance standards provided by subsection (b) of this section and the plumbing fixture is listed in §290.253 of this title (relating to Plumbing Fixture List).

(b) The water saving performance standards for a plumbing fixture are the following standards:

(1) The maximum flow from a sink or lavatory faucet or a faucet aerator shall not exceed 2.20 gallons of water per minute at a pressure of 60 pounds per square inch.

(2) The maximum flow from a shower head shall not exceed 2.5 gallons of water per minute at a constant pressure over 80 pounds per square inch.

(3) The maximum volume of water per flush from a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state before January 1, 2014:

(A) maximum flow shall not exceed an average of one gallon of water per flush;
and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals."

(4) Except as provided for in §290.256 of this title (relating to Exemptions), for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) maximum flow shall not exceed an average of 0.5 gallons of water per flush;
and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" or

(ii) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals."

(5) For a toilet sold, offered for sale, or distributed in this state before January 1, 2014:

(A) The maximum volume of water per flush shall not exceed an average of 1.60 gallons; and

(B) The toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" and

(ii) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped with a Dual Flushing Device."

(6) Except as provided for in §290.256 of this title, for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014 must be:

(A) A dual flush toilet that meets the following standards:

(i) The average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons; and

(ii) The toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(I) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" and

(II) American Society of Mechanical Engineers Standard A112.19.4-2006 "Six-Liter Water Closets Equipped with a Dual Flushing Device;" or

(B) A single flush toilet that meets the following standards:

(i) The average flush volume may not exceed 1.28 gallons; and

(ii) The toilet must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals."

(7) All drinking water fountains shall be operated by a self-closing valve.

(8) The maximum flow rate from a commercial pre-rinse spray valve shall not exceed 1.6 gallons of water per minute when tested with the method specified in ASTM International Standard F2324-03.

(c) Nonwater-supplied urinal performance standards are the following:

(1) A person may not sell, offer for sale, or distribute in this state a nonwater-supplied urinal in this state unless the nonwater-supplied urinal:

(A) meets the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals;" or

(ii) International Association of Plumbing and Mechanical Officials Standard ANSI Z124.9-2004 "Plastic Urinal Fixtures;"

(B) provides a trap seal that complies with the building code of the local government in which the urinal is installed; and

(C) permits the uninhibited flow of waste through the urinal to the sanitary drainage system.

(2) The manufacturer or importer must submit to the executive director certified test results from a laboratory accredited by the American National Standards Institute verifying that the nonwater-supplied urinal conforms to the requirements described by paragraph (1) of this subsection.

(3) A person who installs a nonwater-supplied urinal shall install water distribution and fixture supply piping sized to accommodate a water supply urinal to an in-wall point immediately adjacent to the nonwater-supplied urinal location so that the nonwater-supplied urinal can be replaced with a water-supplied urinal if desired by the owner or required by a code enforcement officer.

(4) A person who owns a nonwater-supplied urinal shall clean and maintain the nonwater-supplied urinal in accordance with the manufacturer's instructions.

Adopted March 30, 2010

Effective April 26, 2010

§290.253. Plumbing Fixture List.

The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer to meet the water saving performance standards established by §290.252(b) of this title (relating to Design Standards). To have a plumbing fixture included on the commission's current list, a manufacturer must:

(1) furnish identification and the performance specifications of the plumbing fixture; and

(2) furnish certified test results from a laboratory accredited by the American National Standards Institute verifying that the plumbing complies with the flow requirements established in §290.252(b) of this title.

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§290.254. Removal from List.

(a) A plumbing fixture listed in §290.253 of this title (relating to Plumbing Fixture List) shall be removed from the list if:

(1) the commission finds the manufacturer's or importer's certification to be inaccurately certified;

(2) the agency finds that the fixture does not meet the standards set forth in §290.252(b) of this title (relating to Design Standards).

(b) Prior to removal of the plumbing fixture from the list, a manufacturer or importer shall have the right to seek a hearing with the commission. A hearing held pursuant to this section shall be held in

accordance with the Administrative Procedure Act (APA) and the commission's formal hearing procedures.

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§290.256. Exemptions.

(a) These sections do not apply to a plumbing fixture:

(1) that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer in Texas on or before January 1, 1992;

(2) such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards established by these sections (example: fixtures in handicapped modified showers, etc.);

(3) originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date;

(4) imported only for use at the importer's domicile;

(5) that is a nonwater supplied urinal;

(6) that has been certified by the United States Environmental Protection Agency under the WaterSense program; or

(7) if it has been determined by the governing body of a municipality or county that to flush a public sewer system located in the municipality or county in a manner consistent with public health, a greater quantity of water is required because of the configuration of the drainage system of buildings located in the municipality or county or the public sewer system.

(b) The water saving performance standards for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by §290.252(b)(3) of this title (relating to Design Standards) if the urinal was designed for heavy-duty commercial applications.

(c) The water saving performance standards for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by §290.252(b)(5) of this title if the toilet is a water closet that has a design not typically found in a residential application or that is designed for a specialized application, including a water closet that:

(1) is mounted on the wall and discharges to the drainage system on the floor;

(2) is located in a correctional facility, as defined by Texas Penal Code, §1.07;

(3) is used in a bariatric application;

(4) is used by children at a daycare facility; or

(5) consists of a non-tank type commercial bowl connected to the plumbing system through a pressurized flushing device.

(d) These sections do not apply to a commercial pre-rinse spray valve that:

(1) as of January 1, 2006:

(A) is in the inventory of a commercial pre-rinse spray valve retailer, distributor, lessor, or importer; or

(B) has been ordered by a commercial pre-rinse spray valve retailer, distributor, lessor, or importer and is delivered before February 1, 2006; and

(2) is sold before September 1, 2006.

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§290.260. Labeling.

(a) Prohibitions. A person may not sell, offer for sale, distribute, or import into this state a new commercial or residential clothes washing machine, dish washing machine, or lawn sprinkler unless the clothes washing machine, dish washing machine, or lawn sprinkler is marked or labeled in accordance with these sections.

(1) Each clothes washing machine and dish washing machine shall have an attached label that shows the amount of water used per cycle.

(2) Each lawn sprinkler shall be marked with the water usage expressed in gallons per minute (gpm) by either a permanent mark on each sprinkler, or a label or tag attached to each sprinkler.

(b) Exemptions. This section does not apply to those clothes washing machines and dish washing machines that are subject to and are in compliance with the labeling requirements of the National Appliance Energy Conservation Act of 1987, Public Law 100-12 (42 United States Code, §6294) and as amended.

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§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.

Adopted June 5, 2002

Effective June 30, 2002

§290.265. Administrative Penalty.

(a) A person who violates these sections shall be assessed an administrative penalty in an amount described in paragraphs (1) - (3) of this subsection but not to exceed \$5,000 for each violation and for each day of a continuing violation.

(1) The penalty for sale, offering for sale, distributing or importing a plumbing fixture which does not meet the requirements of these sections shall be a minimum of \$25 and a maximum of \$500 for each unit sold, offered for sale, distributed or imported. The amount of the assessed penalty will be based upon subsequent cooperation by the violators with the commission.

(2) The penalty for sale, offering for sale, distributing, or importing a plumbing fixture not labeled in accordance with these sections shall be a minimum of \$25 and a maximum \$500 for each unit sold, offered for sale, distributed, or imported. The amount of assessed penalty will be based upon subsequent cooperation by the violators with the commission.

(3) The penalty for willful and continuing violation of paragraphs (1) and/or (2) of this subsection shall be above \$5,000 for each violation.

(b) A person against whom an administrative penalty is assessed is entitled to a notice and hearing on the assessment of the penalty in accordance with the Administrative Procedure and Texas

Register Act, Texas Civil Statutes, Article 6252-13a, and the commission's formal hearing procedures as described in 30 TAC Chapter 337 (relating to Enforcement).

(c) Not later than the 30th day after the date on which the commission's order assessing the administrative penalty is final, the person assessed the penalty shall pay the full amount of the penalty or file a petition for judicial review. A person who fails to comply with this subsection waives judicial review.

§290.266. Civil Penalty; Injunction.

(a) A person who violates these sections is subject to civil penalty not to exceed \$5,000 for each violation and for each day of a continuing violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate these rules, the commission, a county, or a municipality may bring a civil action in a district court in Travis County, the county in which the defendant resides or the county where the violation occurred, is occurring or is threatened for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation;
- (2) assessment of a civil penalty for a violation; or
- (3) both injunctive relief and a civil penalty.

(c) The commission is an indispensable party in a suit brought by a county or municipality under this section.

§290.267. Phase-In of Water Saving Performance Standards.

(a) Notwithstanding §290.252(b)(3) and (5) of this title (relating to Design Standards), at least the following percentage of the models of urinals and of the models of toilets offered for sale by a manufacturer in this state must meet the requirements of §290.252(b)(4) and (6) of this title, respectively:

- (1) 50% of the models of urinals and of the models of toilets offered for sale on January 1, 2010;
- (2) 67% of the models of urinals and of the models of toilets offered for sale on January 1, 2011;
- (3) 75% of the models of urinals and of the models of toilets offered for sale on January 1, 2012; and
- (4) 85% of the models of urinals and of the models of toilets offered for sale on January 1, 2013.

(b) Not later than January 31 of each year, a manufacturer that offers urinals or toilets for sale in this state shall notify the executive director in writing of the percentage of models of urinals and of the models of toilets offered for sale by the manufacturer in this state that meet the requirements of §290.252(b)(4) and (6) of this title, respectively.

(c) This section expires September 1, 2013.

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