

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §290.251. The commission also proposes new §290.261.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules 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 categorize the clothes washing machines according to four different water consumption factors. The proposed 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 proposed to conform to internal style standards.

Section 290.251, Purpose, Authority, and Definitions, is proposed to be amended. 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 proposes to add the definition of “Import” to

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 proposes to include that 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 proposes to add “clothes washing machines” to the definition of “manufacturer.”

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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are expected for the agency or other units of state and local government.

The proposed rules implement HB 2403 (relating to reporting requirements regarding certain clothes washing machines), 77th Legislature, 2001. This bill requires that the commission, beginning in

February 2003, report to the Legislature not later than February 28th of each year, the number of washing machines imported into this state the previous year by water consumption factors. There are four water consumption factor categories defined in the bill. The bill would also require the appropriate trade industry associations or other entities to provide the information to the commission.

The proposed rules would require the appropriate industry trade associations, clothes washing machine manufacturers or other entities, no later than January 31st of each year, to report to the commission the number of clothes washing machines imported into the state. The report must categorize the machines according to four different water consumption factors. A water consumption factor is defined as the quotient of the total weighted per cycle water consumption divided by the capacity of the clothes washer. The higher the water consumption factor, the greater the amount of water consumption.

The four categories would include: 1) the number of clothes washing machines with a water consumption factor of more than 11 that were imported into this state during the preceding calendar year; 2) the number of clothes washing machines with a water consumption factor of more than 9.5, but not more than 11 that were imported into this state during the preceding year; 3) the number of clothes washing machines with a water consumption factor of 9.5 or less that were imported into the state during the preceding calendar year; and 4) the average water consumption factor of all clothes washing machines that were imported into this state during the preceding calendar year. The proposed rules would not apply to machines with a capacity of more than 3.5 cubic feet or less than 1.6 cubic feet.

At this time, there is one trade association, the Association of Home Appliance Manufacturers, that represents the majority of the estimated ten clothes washing machine manufacturers in the country. Manufacturers already report general information to the trade association, and the trade association would collect and report the required information regarding the number of machines imported into Texas by water consumption factor. Manufacturers will need to collect and report by their water consumption factors, the number of machines shipped to Texas. According to the trade association, this information is available and no significant fiscal implications are anticipated to the manufacturers or the trade association. It is not known how many clothes washing machines have been imported into Texas because this information has not been collected before and Texas is the only state known to have this requirement.

Commission staff will receive the required information from the trade association and produce a report which will be submitted to the Legislature no later than February 28th of each year. No significant fiscal implications are anticipated for the agency or other units of state or local government to submit the report.

PUBLIC BENEFITS AND COSTS

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules would include compliance with state law, and the collection of data to make informed decisions regarding water use and conservation for clothes washing machines.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation or enforcement of the proposed rules. The proposed rules would not impose new regulatory requirements on manufacturers or consumers of clothes washing machines, only a reporting requirement for certain manufacturers or trade associations.

The proposed rules implement HB 2403. This bill requires that the commission, beginning in February 2003, report to the Legislature not later than February 28th of each year, the number of washing machines imported into this state the previous year by water consumption factors. There are four water consumption factor categories defined in the bill. The bill would also require appropriate trade industry associations or other entities to provide this information to the commission.

The proposed rules would require clothes washing machine manufacturers, appropriate industry trade associations or other entities to report to the commission, no later than January 31st of each year, the number of clothes washing machines imported into the state the previous calendar year. The report must categorize the machines according to four water consumption factors. A water consumption factor is defined as the quotient of the total weighted per cycle water consumption divided by the capacity of the clothes washer. The higher the water consumption factor, the greater the amount of water consumption.

The four categories would include: 1) the number of clothes washing machines with a water consumption factor of more than 11 imported into the state during the preceding year; 2) the number of clothes washing machines with a water consumption factor of more than 9.5, but not more than 11

imported into the state during the preceding year; 3) the number of clothes washing machines with a water consumption factor of 9.5 or less imported into the state during the preceding year; and 4) the average water consumption factor of all clothes washing machines that were imported into the state during the preceding calendar year. The proposed rules would not apply to machines with a capacity of more than 3.5 cubic feet or less than 1.6 cubic feet.

At this time, one trade association, the Association of Home Appliance Manufacturers, represents the majority of the estimated ten clothes washing machine manufacturers in the country. Manufacturers already report general information to the trade association, and the trade association would collect and report the required information, by water consumption factor, regarding the number of machines imported into Texas. Manufacturers will need to collect and report on the number of machines shipped to Texas by their water consumption factors. According to the trade association, this information is available and no significant fiscal implications are anticipated to the manufacturers or to the trade association. There is one foreign manufacturer with a business office and distribution center in Texas. It is not known how many clothes washing machines have been imported into Texas because this information has not been collected. Texas is the only state known to have this requirement.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of the implementation and enforcement of the proposed rules for small and micro-businesses that import into the state any clothes washing machines with a water consumption factor of less than 11 or more than 9.5. The proposed rules would not apply to machines with a capacity of more than 3.5 cubic feet or less than 1.6 cubic feet.

There are no known small or micro-businesses that import washing machines into the state, but if there are, they will be required to report on the number of clothes washing machines they import into the state that meet certain water consumption factors.

The proposed rules would require clothes washing machine manufacturers, appropriate industry trade associations or other entities to report to the commission, no later than January 31st of each year, the number of clothes washing machines imported into the state. The report must categorize the machines according to four different water consumption factors. A water consumption factor is defined as the quotient of the total weighted per cycle water consumption divided by the capacity of the clothes washer. The higher the water consumption factor, the greater the amount of water consumption.

The four categories would include: 1) the number of clothes washing machines with a water consumption factor of more than 11 that were imported into the state during the preceding calendar year; 2) the number of clothes washing machines with a water consumption factor of more than 9.5, but not more than 11 imported into the state during the preceding calendar year; 3) the number of clothes washing machines with a water consumption factor of 9.5 or less but were imported into the state during the preceding calendar year; and 4) the average water consumption factor of all clothes washing machines that were imported into the state during the preceding calendar year. The proposed rules would not apply to machines with a capacity of more than 3.5 cubic feet or less than 1.6 cubic feet.

At this time, one trade association, the Association of Home Appliance Manufacturers, represents the majority of the estimated ten clothes washing machine manufacturers in the country. Manufacturers

already report general information to the trade association, and the trade association would collect and report the required information, by water consumption factors, regarding the number of machines imported into Texas. Manufacturers will need to collect and report, by water consumption factors, on the number of machines shipped to Texas. According to the trade association, this information is available and no significant fiscal implications are anticipated by the manufacturers or the trade association. There is one foreign manufacturer with a business office and distribution center in Texas. It is not known how many clothes washing machines have been imported into Texas because this information has not been previously collected.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 proposed rules do not meet the definition of a major environmental rule because the specific intent of the proposed 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 proposed 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 proposed 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 proposed rules do not exceed a standard set by federal law. The proposal 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 proposal 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 proposal 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 proposed on

an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. The commission invites public comment on the draft regulatory analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary analysis for these proposed rules in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed 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 proposed 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 proposed rules only create recordkeeping and reporting requirements. Therefore, the proposed rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposed 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 proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-001-290-WT. Comments must be received by 5:00 pm, April 15, 2002. For further information, contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

STATUTORY AUTHORITY

The amendment is proposed under HB 2403, 77th Legislature, 2001, which requires the agency to adopt rules to implement THSC, §372.004. In addition, the amendment is proposed under Texas Water Code (TWC), §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.

The proposed amendment implements THSC, §372.004 and TWC, §5.102 and §5.103.

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. [Purpose. The purpose of these sections is to establish water saving performance standards and labeling requirements for sink and lavatory faucets, shower heads, drinking water fountains, urinals, toilets, and flushometer toilets that are manufactured, imported, or otherwise supplied for sale in the State of Texas, and to establish labeling requirements for commercial or residential clothes-washing and dishwashing machines and lawn sprinklers to assist the consumer in making an informed purchasing decision. These sections apply to manufacturers, importers, and major suppliers of plumbing fixtures, who sell, offer for sale, distribute, or import plumbing fixtures into the state. These sections do not apply to plumbing fixtures manufactured in the State for sale outside of the state.]

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

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

(1) - (4) (No change.)

(5) **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.

(6) [(5)] **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.

(7) [(6)] **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.

(8) [(7)] **Manufacturer** - Someone who manufactures [that makes] plumbing fixtures or clothes washing machines.

(9) [(8)] **Model** - A type or design of a plumbing fixture.

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

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

(12) [(11)] **Toilet** - A toilet or water closet except a wall-mounted toilet that employs a flushometer valve.

[(12)] **APA** - The Administrative Procedure Act.]

(13) **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.