

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §290.267, amendments to §§290.251 - 290.254, 290.256, and 290.260, and the repeal of §290.255.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2009, the 81st Legislature passed House Bill (HB) 2667, relating to performance standards for plumbing fixtures sold in this state. HB 2667 amends Texas Health and Safety Code (THSC), §372.001 and §372.002 to increase efficiency standards, add performance, labeling, and testing requirements, add exemptions, add a five-year phase-in of new standards, and repeal TCEQ labeling and fee requirements for plumbing fixtures sold in this state. HB 2667 adds THSC, §§372.0025, 372.0045, and 372.006 to add exceptions for municipalities or counties, a phase-in of water saving performance standards, and performance standards for nonwater-supplied urinals, respectively. HB 2667 amends Texas Water Code, §5.701(q) to remove the commission's authority to collect fees for testing a product to ensure that the certification is accurate.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission proposes to also amend 30 TAC Chapter 291, Utility Regulations.

SECTION BY SECTION DISCUSSION

§290.251. Purpose, Authority, and Definitions.

The commission proposes to amend §290.251 to revise definitions for various plumbing fixtures relating to the subchapter. Terms to be revised are plumbing fixture and toilet. Terms to be added are plumbing fixture fitting, pressurized flushing device, and water closet. The term "ASME" is proposed to be deleted, as this acronym is no longer used throughout the subchapter, and the term "ASTM" is proposed to be

deleted, as this organization is currently known only as ASTM International. As a result of the additions and deletions, some existing definitions are proposed to be renumbered accordingly. This amendment is required by THSC, §372.001, as amended by HB 2667.

§290.252. Design Standards.

The commission proposes to amend §290.252 to include new performance standards and revise testing requirements for plumbing fixtures. A reference to testing standards established by the American National Standards Institute is removed. All references to testing procedures adopted by the commission for plumbing fixtures are removed. Performance, testing, and labeling requirements for plumbing fixtures prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 are added. Performance standards for nonwater-supplied urinals are also added. This amendment is required by THSC, §372.002, as amended by HB 2667.

§290.253. Plumbing Fixture List.

The commission proposes to amend §290.253 to change the process of providing test results for plumbing fixtures to the commission. All references to testing by the commission and fees were removed by the statute and therefore are removed from this section. This amendment is required by THSC, §372.002, as amended by HB 2667.

§290.254. Removal from List.

The commission proposes to amend §290.254 to remove the references to the commission charging fees, which was removed by the statute. The commission proposes to replace a reference to "the department" with "the agency." As a result of the removals, paragraphs are renumbered accordingly. This amendment

is required by THSC, §372.002, as amended by HB 2667.

§290.255. Fees.

The commission proposes to repeal §290.255, concerning fees charged by the commission. This repeal is required because THSC, §372.002(d) is repealed by HB 2667.

§290.256. Exemptions.

The commission proposes to amend §290.256 to add additional exemptions for municipalities and counties that have situations that would require a greater quantity of water, nonwater-supplied urinals, and plumbing fixtures certified by the United States Environmental Protection Agency (EPA) under the WaterSense program. This amendment is required by THSC, §372.0025, as amended by HB 2667. The commission proposes to amend §290.256 to add additional exemptions for heavy-duty commercial urinals, and toilets that are mounted on the wall and discharge to the drainage system on the floor, are located in a correctional facility, are used in a bariatric application, are used by children at a daycare, or consist of a non-tank type commercial bowl connected to the plumbing system through a pressurized device. As a result of these additions, existing subsection b is relettered accordingly. This amendment is required by THSC, §372.002, as amended by HB 2667.

§290.260. Labeling.

The commission proposes to amend §290.260 to remove the TCEQ's labeling requirements for plumbing fixtures. This repeal is required because THSC, §372.003(a) and (b), concerning labeling requirements, are repealed by HB 2667. As a result of these deletions, the remaining subsections are relettered accordingly.

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

The commission proposes new §290.267 to add a five-year schedule for phasing in fixtures that comply with the new standards. Procedures for reporting the percentage of models to the commission annually are prescribed. This proposed new section expires September 1, 2013. This new section is required by THSC, §372.0045, as amended by HB 2667.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules implement HB 2667, and increase efficiency standards for plumbing fixtures sold in the state. The proposed rules provide for a five-year phase-in of water saving performance standards for plumbing fixtures. The phase-in of the standards is expected to allow manufacturers time to change their products to meet the new standards, and to allow retailers the opportunity to deplete their inventory. The proposed rules also provide exemptions from the standards for municipalities or counties that demonstrate that the new standards for plumbing fixtures would require greater quantities of water due to drainage system configurations. The proposed rules also provide exemptions from the certification requirements if manufacturers have been certified by the EPA under the WaterSense program. Lastly, under the proposed rules, the agency will no longer assess the plumbing fixture fee to manufacturers. This fee had been assessed by the agency in order to verify the manufacturer's certification of water saving performance

standards for plumbing fixtures.

Manufacturers of plumbing fixtures sold, distributed, or offered for sale in the state are no longer required to pay the plumbing fixture fee as of September 1, 2009. The commission is still required to make and maintain a current list of plumbing fixtures that are certified by the manufacturer to meet water saving performance standards, but the commission no longer tests a listed fixture to determine the accuracy of the manufacturer's certification. Instead, in order to have a plumbing fixture included on the commission's list, the manufacturer must supply to the commission certified test results from a laboratory accredited by the American National Standards Institute that the fixture meets the prescribed water saving performance standards. The loss of fee revenue to the Water Resource Management Account 153 is estimated to be approximately \$41,000 each year.

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 changes seen in the proposed rules will be a reduction in the use of water due to more efficient plumbing fixtures. Staff estimates that the phase-in of more efficient plumbing fixtures over a five-year period could result in water savings of 20% or more for each plumbing fixture that is installed.

No significant fiscal implications are anticipated for the estimated 116 plumbing fixture manufacturers that would be affected by the proposed rules. Manufacturers will no longer be required to pay fees to list their products with TCEQ, and will save \$50 per model series initially for new products and \$25 per model series annually thereafter. There may be costs to develop new fixtures for some manufacturers in

order to comply with the new water efficiency standards. Agency staff is not able to determine these costs at this time. Any additional costs to manufacturers are the result of the new statutory requirements and not of this rulemaking. However, because the new standards are similar to those approved through the EPA WaterSense program, it is assumed that many manufacturers already have products that comply with the new standards.

Homes and businesses that install plumbing fixtures that comply with the new requirements will decrease their indoor water use and therefore may experience cost savings for their utility bills.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Manufacturers who are small or micro-businesses will no longer be required to pay fees to list their products with TCEQ, and will save \$50 per model series initially for new products and \$25 per model series annually thereafter. There may be costs to develop new fixtures for some of the estimated seven small or micro-businesses that manufacture plumbing fixtures in order to comply with the new water efficiency standards. Agency staff is not able to determine if there are costs and what the costs would be at this time. Any additional costs to manufacturers are the result of the new statutory requirements and not of this rulemaking. Because the new standards are similar to those approved through the EPA WaterSense program, it is assumed that many manufacturers already have products that comply with the new standards.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory

flexibility analysis is not required because the proposed rules are required to comply with state law and to protect the health, safety, environmental, and economic welfare of the state.

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 evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking requires a regulatory impact analysis under Texas Government Code, §2001.0225. The proposed rulemaking may be a "major environmental rule" under Texas Government Code, §2001.0225. Although the specific intent of the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the public health and safety of the state or a sector of the state, these rules do result in protecting the environment, or conserving water resources. The purpose of this rulemaking is to require certain standards for plumbing fixtures in order to conserve water. These new standards are being implemented because they are required by state law. The proposed rules also repeal the commission's authority to charge fees for testing products to make sure that the products meet the standards. Because these plumbing fixtures that meet the new standards should not cost any more than they would under existing standards, there is no impact on the economy or jobs. Also, these rules do not exceed a standard of federal law that is not specifically required by state law, exceed an express requirement of state law, exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and

federal program, or are proposed solely under the general powers of the agency instead of under a specific state law.

Therefore, no regulatory impact analysis is required under Texas Government Code, §2001.0225 for this rulemaking.

The commission invites public comment regarding this draft regulatory impact analysis determination.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed amendment constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to describe plumbing fixtures standards in state law to conserve water and to repeal the agency's authority to test products to ensure that they meet the standards and to charge fees for this testing. The proposed amendment would substantially advance this stated purpose by placing the standards in the rule and repealing the testing and fee program in the rule. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property.

Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. There are no other reasonable or practicable alternatives to this rulemaking because it is required by statute.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on November 17, 2009 at 10:00 AM in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-038-290-PR. The comment period closes November 23, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Scott Swanson, Water Rights Section, (512) 239-0703.

SUBCHAPTER G: WATER SAVING PERFORMANCE STANDARDS

§§290.251 - 290.254, 290.256, 290.260, 290.267

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendments and new section are also proposed under Texas Health and Safety Code (THSC), Chapter 372, concerning Environmental Performance Standards for Plumbing Fixtures, which requires the commission to maintain a list of certified plumbing fixtures that may be sold in the state.

The proposed amendments and new section implement THSC, §§372.001, 372.002, 372.0025, 372.0045, and 372.006; and TWC, §5.701.

§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) ASME--The American Society of Mechanical Engineers.]

[(3) ASTM--The American Society for Testing and Materials.]

(2) [(4)] 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) [(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.

(4) [(6)] 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) [(7)] 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) [(8)] Manufacturer--Someone who manufactures plumbing fixtures or clothes washing machines.

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

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

(9) [(11)] 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 [A sink faucet, lavatory faucet, faucet aerator, shower head], urinal, toilet, flush valve toilet, or drinking water fountain[, or commercial pre-rinse spray valve].

(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 [toilet or] water closet [except a wall-mounted toilet that employs a flushometer valve].

(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) [(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.

§290.252. 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 [those established by the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), current revision, or] the following standards:[, whichever are the more restrictive.]

(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 [when tested in accordance with ANSI testing procedures].

(2) The maximum flow from a shower head shall not exceed 2.5 [2.75] gallons of water per minute at a constant pressure over [equal to] 80 pounds per square inch [when tested in accordance with ANSI testing procedures].

(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
[when tested in accordance with ANSI testing procedures.]; 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) [(4)] The maximum volume of water per flush [from a toilet] shall not exceed

an average of 1.60 gallons [when tested in accordance with ANSI testing procedures.]; 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."

[(5) The maximum volume of water per flush from a wall mounted toilet that employs a flushometer valve shall not exceed an average of 2.00 gallons when tested in accordance with ANSI testing procedures.]

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

(8) [(7)] 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.

§290.253. Plumbing Fixture List.

[(a)] The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer [or importer] 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 [or importer] must:

(1) furnish identification and the performance specifications of the plumbing fixture; and [method and testing data that clearly indicates that the plumbing fixture was tested in accordance with American National Standards Institute or the American Society for Testing and Materials requirements and complies with the flow requirements established in §290.252(b) of this title; or]

(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.

[(2) submit an identified sample plumbing fixture to the commission for testing and verification of water saving performance standards by the department; and]

[(3) pay the appropriate fee as listed in §290.255 of this title (relating to Fees).]

[(b) The commission retains the right to request a sample of the plumbing fixture for testing.]

[(c) The commission may assess against a manufacturer or importer a reasonable fee for an inspection of a commercial pre-rinse spray valve to determine the accuracy of the manufacturer's or importer's certification in an amount determined by the commission to cover the expenses incurred in the administration of this chapter.]

§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 manufacturer or importer is delinquent in paying the fee as set forth in §290.255 of this title (relating to Fees); or]

~~(2)~~ [(3)] the agency [department] 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.

[(c) A plumbing fixture reinstated on the list after being removed due to a delinquent renewal fee will be considered a new product on the list.]

§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; [or]

(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) [(b)] 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.

§290.260. Labeling.

[(a) Labeling requirements. A person may not sell, offer for sale, distribute, or import into this state a plumbing fixture unless the plumbing fixture, including each component of a toilet, flush valve toilet, or urinal and the associated packaging are marked and labeled in accordance with these sections. The labeling requirements in these sections shall take effect on October 25, 1994.]

[(1) Each water closet, urinal, and flush valve shall be marked or labeled in accordance with the National Energy Policy Act of 1992 (42 United States Code §6294 et seq.) and as amended.]

[(2) Each water closet, urinal, and flush valve package shall be marked or labeled in accordance with the National Energy Policy Act of 1992 (42 United States Code §6294 et seq.) and as amended.]

[(3) Each faucet, aerator, and showerhead shall be marked in accordance with the National Energy Policy Act of 1992 (42 United States Code §6294 et seq.) and as amended, except that each showerhead, flow restricting or controlling spout end device and aerator shall bear a permanent

legible mark indicating the flow rate, expressed in gallons per minute (gpm). The flow rate shall be the actual flow rate or the maximum flow rate specified in §290.252 of this title (relating to Design Standards).]

[(4) Each faucet, aerator, and showerhead package shall have the flow rate expressed in gallons per minute (gpm) clearly marked on the front.]

(a) [(b)] 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) [(c)] 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.

§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.

SUBCHAPTER G: WATER SAVING PERFORMANCE STANDARDS

§290.255

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the Texas Water Code. The repeal is also proposed under Texas Health and Safety Code Chapter 372, concerning Environmental Performance Standards for Plumbing Fixtures, which requires the commission to maintain a list of certified plumbing fixtures that may be sold in the state.

The proposed repeal implements Texas Health and Safety Code, §372.002.

[§290.255. Fees.]

[An initial fee of \$50 per plumbing fixture model will be assessed for certification review, inspection, identification, and listing by the commission. An annual renewal fee of \$25 per plumbing fixture model will also be assessed for maintenance of current listing. This fee will be payable to the commission by the manufacturer or importer of the listed plumbing fixture before October 31 of each year.]