

The Texas Natural Resource Conservation Commission (TNRCC, commission or agency) proposes new §§328.120-328.123, concerning symbols for certain plastic containers.

EXPLANATION OF PROPOSED RULES

Passed by the Texas Legislature in 1989, Texas Health & Safety Code, §369.002 (a)-(d) adopts a labeling system for plastic bottles and rigid plastic containers recommended by the Society of the Plastics Industry. This system is the traditional triangular symbol with the numbers inside the triangle to identify the type of resin.

Section 369.002(e) was added by the Legislature in 1993 and states “The commission may approve the use of another nationally or internationally recognized label coding system for special-purpose plastic bottles or rigid plastic containers which are components of motor vehicles in place of the symbols described by subsections (c) and (d).” The Society of Automotive Engineers, Inc. (SAE) asked that the commission approve the use of SAE Recommended Practice J1344, *Marking of Plastic Parts*.

Approval would allow the vehicle-manufacturing industry to label plastic containers according to the SAE’s recommended system for purposes of recycling instead of the labeling system specified in Texas Health & Safety Code, §369.002 (a)-(d). The vehicle dismantling and recycling industry would conceivably recover more plastics from vehicles by being able to identify the various plastic resins more easily. This proposal contains amendments that would allow this option.

FISCAL NOTE

Jeff Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the rules as proposed are in effect, there will be no fiscal implications for state or local governments as a result of administration or enforcement of the proposed amendments. Enforcement of the rules will not result in an increase in workload for commission staff. The proposed rules would allow automobile manufacturers to use an internationally recognized label coding system for special purpose plastic bottles or rigid plastic containers which are components of motor vehicles. The proposed rules to allow the label coding system was the result of a petition submitted to the commission by the Society of Automotive Engineers, Inc. Approval of the rule package would allow the vehicle manufacturing industry to label plastic containers according to the SAE's recommended system for recycling. Currently manufacturers use a coding system for plastics. However, the proposed rules would allow the manufacturer to use a more specific number in the coding system which would identify the resins used in the plastic. The vehicle dismantling and recycling industry may recover more plastics from vehicles by being able to identify the various plastic resins more easily.

PUBLIC BENEFIT

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 enforcement of and compliance with the rules would be to allow for the enhanced recovery and recycling of plastic materials. The proposed rules would allow the vehicle-manufacturing industry to code plastic containers according to the SAE recommended system. Because these rules do not require the use of the SAE Plastics Coding system, manufacturers of plastic containers for use in vehicles will not incur any costs involuntarily. Manufacturers of other plastic

containers have been in compliance with the statute since its effective date in 1991. In addition, the vehicle dismantling and recycling industry would allow more plastics from vehicles to be recovered by being able to identify the various plastic resins more easily.

SMALL AND MICRO BUSINESS ANALYSIS

As identified in the PUBLIC BENEFIT and FISCAL NOTE sections, no significant additional costs are anticipated to any businesses including small and micro businesses as a result of complying with the proposed rulemaking. Because the proposed rulemaking will allow the vehicle-manufacturing industry to code plastic containers according to the SAE's recommended system for purposes of recycling, the proposed rulemaking may be considered to have potentially positive economic effects for small businesses, especially those involved in the recovery and recycling of automotive plastics.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 the Texas Government Code. The proposed rulemaking will allow the vehicle-manufacturing industry to label plastic containers according to the Society of Automotive Engineers recommended system, which is currently standard practice. This proposal does not meet the definition of a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The use of SAE's coding system could lead to more recovery of plastics from vehicles, and therefore these rules could result in a cost savings to the industry. Furthermore, this rulemaking will not adversely

affect in a material way the environment, or the public health and safety of the state or a sector of the state. In addition, the proposed rulemaking is not a major environmental rule because it does not meet any of the four applicability requirements of a “major environmental rule.” This rulemaking does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, nor was it developed solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to recognize in commission rules as standard industry practice of the vehicle-manufacturing industry, to code plastic containers according to the Society of Automotive Engineers, Inc. recommended system. This action will not make existing rules less stringent. The use of SAE’s coding system could lead to more recovery of plastics from vehicles because it provides a more detailed system of categorization. Promulgation and enforcement of these rules will not burden private real property because private real property is not the subject of these rules. Therefore, this proposal will not constitute a taking under Chapter 2007 of the Texas Government Code.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that these rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/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

Written comments may be submitted to Bettie Bell, 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 98033-328-WS. Comments must be received by 5:00 p.m., November 29, 1999. For further information, please contact Pharr Andrews, Policy and Regulations Division, at (512) 239-6124.

STATUTORY AUTHORITY

The new sections are proposed under the authority of Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction. Additionally, Texas Health and Safety Code, §361.422 provides the commission with the authority to adopt rules regarding recycling goals, and Texas Health and Safety Code, §369.002 provides the commission with the authority to establish a labeling system for certain plastic containers.

The proposed sections implement Texas Health and Safety Code, §369.002.

SUBCHAPTER H: SYMBOLS FOR CERTAIN PLASTIC CONTAINERS

§§328.120-328.123

§328.120. Purpose.

The purpose of this subchapter is to establish procedures and requirements for the labeling of certain plastic containers.

§328.121. Applicability.

The sections in this subchapter are applicable to persons who are involved in the manufacturing or distribution of a plastic bottle or rigid plastic container regulated by the commission pursuant to the Texas Health and Safety Code, §§369.001-369.002.

§328.122. Definitions of Terms.

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

(1) **Plastic** - A material made of polymeric organic compounds and additives that can be shaped by flow.

(2) **Plastic bottle** - A plastic container that:

- (A) has a neck smaller than the body of the container;
- (B) is designed for a screw top, snap cap, or other closure; and
- (C) has a capacity of not less than 16 fluid ounces or more than five gallons.

(3) **Rigid plastic container** - A formed or molded container, other than a plastic bottle, that:

- (A) is intended for single use;
- (B) is composed predominantly of plastic resin;
- (C) has a relatively inflexible finite shape or form; and
- (D) has a capacity of not less than eight ounces or more than five gallons.

§328.123. Symbols for Certain Plastic Containers.

(a) A person may not manufacture or distribute a plastic bottle or rigid plastic container unless the appropriate symbol indicating the plastic resin used to produce the bottle or container is molded into or imprinted on the bottom or near the bottom of the bottle or container.

(b) A plastic bottle or rigid plastic container with a base cup or other component of a material different from the basic material used in making the bottle or container shall bear the symbol indicating its basic material.

(c) The symbols used under this section must consist of a number placed within a triangle of arrows and of letters placed below the triangle of arrows. The triangle must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow must be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the arrows must depict a clockwise path around the number.

(d) The numbers, letters of the symbols, and the plastic resins represented by the symbols are:

(1) 1 and PETE, representing polyethylene terephthalate;

(2) 2 and HDPE, representing high density polyethylene;

(3) 3 and V, representing vinyl;

(4) 4 and LDPE, representing low density polyethylene;

(5) 5 and PP, representing polypropylene;

(6) 6 and PS, representing polystyrene; and

(7) 7 and OTHER, representing all other resins, including layered plastics of a combination of materials.

(e) The commission approves the use of SAE J1344 *Marking of Plastic Parts*, an internationally recognized label coding system published by the Society of Automotive Engineers, Inc. (SAE). This optional label coding system is approved for use with special-purpose plastic bottles or rigid plastic containers that are components of motor vehicles in place of the symbols described by subsections (c) and (d) of this section.

(f) The commission shall:

- (1) maintain a list of the symbols; and
- (2) provide a copy of that list to any person on request.

