

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** September 18, 2009
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Richard A. Hyde, P.E., Deputy Director
Office of Permitting and Registration
Docket No.: 2009-0989-RUL
Subject: Commission Approval for Proposed Rulemaking
Chapter 290, Public Drinking Water
Chapter 291, Utility Regulations
HB 2667: Plumbing Fixtures
Rule Project No. 2009-038-290-PR

Reasons for the rule package:

House Bill (HB) 2667, 81st Legislative Session, 2009, changes the standards and labeling requirements for plumbing fixtures, and repeals the agency's fee program. Therefore, Chapters 290 and 291 must be amended to reflect these changes.

Under what authority are we proposing these changes?

HB 2667 amends the following statutes: Texas Health and Safety Code (THSC), §§372.001, 372.002, 372.0025, 372.0045, and 372.006; Texas Water Code (TWC), §5.701 and §13.506.

Is this rulemaking required by federal rule or state statute? Which ones?

No federal rules.

State statute: THSC, §§372.001, 372.002, 372.0025, 372.0045, and 372.006; TWC, §5.701 and §13.506, as amended by HB 2667, 81st Legislature, 2009, Regular Session.

Are there any legal deadlines by which these rules must be proposed, adopted, or effective?

No.

What issue(s) or problem(s) are we trying to solve?

This rulemaking will incorporate changes to state statute made by HB 2667, 81st Legislature, 2009, Regular Session, which provides for more water-efficient plumbing fixtures in the State of Texas.

Why is it important that we do this rule package?

It is important to do this rule package to ensure that the agency's rules are consistent with changes made to state statute by HB 2667.

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Other important background or historical information.

HB 2667 was authored by Representative Allan Ritter and co-authored by Representative Brandon Creighton. The bill was sponsored by Senator Juan "Chuy" Hinojosa.

Scope of the rulemaking:

The proposed rulemaking clarifies and sets out the national standards of the American Society of Mechanical Engineers and American National Standards Institute by which plumbing fixtures will be produced and tested. The proposed rulemaking establishes a phase-in of high efficiency plumbing fixtures brought into Texas, which will allow manufacturers the time to change their production, at the same time allowing retailers the opportunity to turn over their inventory. The proposed rulemaking creates an exemption for those manufacturers that volunteer to register their products with the United States Environmental Protection Agency's (EPA's) WaterSense Program. The proposed rulemaking repeals the TCEQ's certification process for plumbing fixtures and the commission's fee for testing since the plumbing fixtures must meet national certification and testing procedures.

Changes required by federal rule:

None.

Changes required by state statute:

HB 2667 amends THSC, §372.001 and §372.002 to increase efficiency standards, add performance, labeling, and testing requirements, add exemptions, add a 5-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 that can't comply for reasons listed in the statute, a phase-in of water saving performance standards, and performance standards for nonwater-supplied urinals, respectively. HB 2667 amends TWC, §5.701(q) to remove the commission's authority to collect fees for testing a product to ensure that the certification is accurate. HB 2667 amends TWC, §13.506(b) to remove the specification for installation of toilets that meet the old standards (1.6 gallons) for apartments that are required to retrofit toilets due to sub-metering rules.

Staff recommendations that are not expressly required by federal rule or state statute:

None.

Impact on the regulated community:

Who will be affected?

Plumbing fixtures manufacturers that sell products for use in the State of Texas.

Does it create a group of affected persons who were not affected previously? How?

No.

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Will there be a fiscal impact? If so, estimate.

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 the TCEQ, and will save \$50 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's WaterSense program, it is assumed that many manufacturers already have products that comply with the new standards.

Impact on the public:

Who will be affected?

Purchasers of plumbing fixtures.

Does it create a group of affected persons who were not affected previously? How?

No.

Will there be a fiscal impact? If so, estimate.

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.

Impact on agency programs:

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.

Stakeholder meetings:

Have any stakeholder meetings been held?

No.

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With whom?

N/A.

What were the general sentiments?

N/A.

Were any changes made in response to stakeholder concerns?

N/A.

Policy issues:

What policy issues are affected?

Under the proposed rules, the agency will no longer assess the plumbing fixture fee to manufacturers.

Are any policies that are not currently based on rule being made into a rule?

No.

What are the consequences if this rulemaking is not approved to go forward?

The agency's rules will not be consistent with state statutes.

Are there alternatives?

One alternative is to administer the statutes without rules.

Potentially controversial matters:

None known.

Key points in proposed rulemaking schedule:

Anticipated proposal date:	October 7, 2009
Anticipated <i>Texas Register</i> publication date:	October 23, 2009
Public hearing date (if any):	November 17, 2009
Public comment period:	October 23, 2009 to November 23, 2009
Anticipated adoption date:	March 17, 2010

Agency contacts:

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Robin Smith, Staff Attorney, 239-0463
Jessica Rawlings, Texas Register Coordinator, 239-0177

Attachments

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cc: Chief Clerk, 5 copies
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