

# TEXAS REGISTER

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**The TAC Titles Affected will be published in the  
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This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 29, 1993.

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Ann K. Utley  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: February 7, 1994

For further information, please call: (512) 206-4516

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 115. Control of Air Pollution from Volatile Organic Compounds

##### Subchapter G. Consumer-related Sources

##### Consumer Products

- 30 TAC §§115.600, 115.610, 115.612-115.615, 115.617, 115.619

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§115.600, 115.610, 115.612-115.615, 115.617, and 115.619, and the repeal of existing §§115.612-115.615, 115.617, and 115.619, concerning Consumer Products. The new undesignated head will be included in existing Subchapter G, concerning Consumer-Related Sources. The new sections have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP) by November 15, 1993. An ROP SIP was submitted to EPA by November 15, 1993 that included a commitment to adopt rules, if necessary, for Consumer Products. The repeals are necessary in order to adopt the proposed new sections.

The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. Although the ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller, this proposal will affect all counties in the state to

maximize the effectiveness of the rule and subsequent reduction in VOC emissions.

New §115.612, concerning Control Requirements, applies new VOC content standards to various consumer products, and establishes dates for the new standards that allow manufacturers time to develop new product formulations. New §115.613, concerning Alternate Control Requirements, allows manufacturers to apply to the Executive Director for alternate control requirements which result in substantially equivalent VOC emissions when compared to products complying with the standards required by §115.612. New §115.613 also establishes procedures for a manufacturer to apply for a variance based on extraordinary reasons beyond their reasonable control. New §115.614, concerning Innovative Products, allows an exemption from the standards of §115.612 if manufacturers demonstrate that a product will result in equal or less VOC emissions than a representative product complying with the standard or the calculated VOC emissions from a noncomplying product, if the product had been reformulated to comply with the standard.

New §115.615, concerning Testing Requirements, specifies requirements for test methods and alternatives to be used in determining compliance with §115.612. New §115.616, concerning Recordkeeping and Reporting Requirements, details product display, reporting, and recordkeeping requirements which are necessary to verify proper compliance with the requirements of this undesignated head. New §115.617, concerning Exemptions, exempts certain consumer products from other provisions of this undesignated head. New §115.619, concerning Counties and Compliance Schedules, specifies the applicable counties and compliance dates for the new requirements.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994 in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for the first five-year period the proposed sections are in effect, the annual cost to state and local governments is estimated at \$90,000, which would primarily be the result of hiring additional personnel to inspect and monitor these new requirements. Total economic costs to small businesses, persons, and businesses required to implement the proposed measures may vary from \$0.9 million to about \$19.8 million.

Any costs continuing beyond 1997 would be operating, maintenance, and recordkeeping requirements. All estimates are stated in 1993 dollars with no adjustments for inflation and assume continuing costs equal to those incurred during 1996-1997.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing these new sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal are scheduled for the following times and places: January 24, 1994, 7:00 p.m., City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC Central Office in Austin by no later than February 25, 1994. Material received by the Regulation Development Section by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air regional offices. For further information, contact Lou DeCuir at (512) 239-1513.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The new sections are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

*§115 600. Definitions.* Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Commission, the terms used by the Commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this undesignated head, relating to Consumer Products, shall have the following meanings, unless the context clearly indicates otherwise:

**Aerosol cooking spray**-Any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

**Aerosol product**-A pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. This does not include pump sprays.

**Agricultural use**-The use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. This does not include the sale or use of pesticides in properly labeled packages or containers which are intended for home use, use in structural pest control, industrial use, or institutional use. The following are for the purposes of this subchapter only:

(A) Home use means use in a household or its immediate environment.

(B) Structural pest control means for use in maintaining building structures.

(C) Industrial use means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

(D) Institutional use means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

**Air freshener**-Any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. This includes spray disinfectant products that are expressly represented, verbally or visually, for use as air fresheners in a manner unrelated to surface application on the product container, on any label or packaging attached thereto, or in the product's literature or advertising. This does not include products that are used on the human body, or products that function primarily as cleaning products. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from sur-

face application) shall not constitute a claim of air freshening.

**All other forms**-All consumer product forms for which no form-specific volatile organic compound (VOC) standard is specified in §115 612(a) of this title (relating to Control Requirements). Unless specified otherwise by the applicable VOC standard, this includes, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

**Antiperspirant**-Any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

**ASTM**-The American Society for Testing and Materials.

**Automotive windshield washer fluid**-Any liquid designed for use in a motor vehicle windshield washer fluid system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield(s). This does not include any fluid which is placed in a new motor vehicle prior to the time of initial sale.

**Bathroom and tile cleaner**-A product designed to clean tile or surfaces in bathrooms. This does not include products specifically designed to clean toilet bowls or toilet tanks.

**Carburetor-choke cleaner**-A product designed to remove dirt and other contaminants from a carburetor. This does not include products designed to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor.

**Charcoal lighter material**-Any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This does not include any of the following:

(A) electrical starters and probes,

(B) metallic cylinders using paper tinder,

(C) natural gas, and

(D) propane.

**Construction and panel adhesive**-Any one-component household adhesive having gap filling capabilities, and which distributes stress uniformly throughout the bonded area resulting in a reduction or elimination of mechanical fasteners. These materials are applied from one-tenth gallon or eleven fluid ounces caulk cartridges.

**Consumer**-Any person who purchases or acquires any consumer product for personal, family, household, or institu-

tional use. Persons acquiring a consumer product for resale are not considered consumers of that product.

**Consumer product**-A chemically formulated product used by household and institutional consumers.

**Contact adhesive**-Any household adhesive that:

(A) is nitrile-based, or contains polychlorobutadiene (neoprene, chloroprene, bayprene), or latex,

(B) when applied to two substrates, forms an instantaneous, non-repositionable bond,

(C) when dried to touch, exhibits a minimum 30-minute bonding range, and

(D) bonds only to itself without the need for reactivation by solvents or heat.

**Container/packaging**-The part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. This includes any article onto or into which the principal display panel is incorporated, etched, printed, or attached.

**Crawling bug insecticide**-Any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. This does not include products designed to be used exclusively on humans or animals.

**Deodorant**-Means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

**Device**-Any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals), but not including equipment used for the application of pesticides when sold separately there from.

**Disinfectant**-any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et

seq). This does not include any of the following:

(A) products designed solely for use on humans or animals;

(B) products designed for agricultural use;

(C) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; and

(D) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

Distributor—Any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors

Dusting aid—A product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. This does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

Engine degreaser—A cleaning product designed to remove grease, grime, oil, and other contaminants from the external surfaces of engines and other mechanical parts.

Executive Director—The Executive Director of the Texas Natural Resource Conservation Commission, or his or her delegate.

Fabric protectant—A product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of water into the fabric's fibers. This does not include silicone-based products whose function is to provide water repellency, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of ten fluid ounces or less.

Flea and tick insecticide—Any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs; not including products that are designed to be used exclusively on humans or animals and their bedding.

Flexible flooring material—Asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

Floor polish or wax—A wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. This does not include spray buff products, products designed solely for the purpose of cleaning

floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

Flying bug insecticide—Any insecticide product that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths, or gnats. This does not include wasp and hornet insecticide, or products that are designed to be used exclusively on humans or animals.

Fragrance—A substance or complex mixture of aroma chemicals, natural essential oils, and other functional components which is added to a consumer product to impart an odor or scent or to counteract a malodor.

Furniture maintenance product—A wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. This does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.

Gel—A colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

General purpose adhesive—Any non-aerosol household adhesive designed for use on a variety of substrates, not including contact adhesives or construction and panel adhesives.

General purpose cleaner—A product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces; but does not include degreasers.

Glass cleaner—A cleaning product designed primarily for cleaning surfaces made of glass. This does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, and photocopying machines.

Hairspray—A consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

Hair mousse—A hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

Hair styling gel—A high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

High volatility organic compound (HVOC)—Any organic compound that exerts

a vapor pressure greater than 80 milliliters mercury when measured at 200 degrees Celsius.

Household adhesive—Any household product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. This also does not include units of product, less packaging, which weigh more than one pound or consist of more than 16 fluid ounces.

Household product—Any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

Initial sale—The bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in Texas or elsewhere and such a bargain, sale, transfer, or delivery, accompanied by registration or licensing of said vehicle in Texas or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain, sale, transfer, or delivery occurred.

Insect repellent—A pesticide product that is designed to be applied on human skin, hair, or attire worn on humans in order to prevent contact with or repel biting insects or arthropods.

Insecticide—A pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

(A) for agricultural use;

(B) for use in maintaining building structures; or

(C) restricted materials that require a permit for use and possession.

Insecticide fogger—Any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

Institutional product—A consumer product that is designed for use in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit; or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional products do not include household products and products that are incorporated into or used exclusively in the manufacture

or construction of the goods or commodities at the site of the establishment.

**Label**—Any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

**Laundry prewash**—A product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents and/or provides specialized performance.

**Laundry starch product**—A product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. This includes, but is not limited to, fabric finish, sizing, and starch.

**Lawn and garden insecticide**—An insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

**Liquid**—A substance or mixture of substances which is capable of a visually detectable flow as determined under the American Society for Testing and Materials (ASTM) D-4359-90. This does not include powders or other materials that are composed entirely of solid particles.

**Manufacturer**—Any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product for distribution or sale in Texas.

**Medium volatility organic compound (MVOC)**—Any organic compound that exerts a vapor pressure greater than two milli liters mercury and less than or equal to 80 millimeters mercury when measured at 200 degrees Celsius.

**Nail polish**—Any clear or colored coating designed for application to the fin-

gerials or toenails and including, but not limited to, lacquers, enamels, acrylics, base coats, and top coats.

**Nail polish remover**—A product designed to remove nail polish and coatings from fingernails or toenails.

**Non-aerosol product**—Any antiperspirant or deodorant that is not dispensed by a pressurized spray system.

**Nonresilient flooring**—Flooring of a mineral content which is not flexible, including terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

**Oven cleaner**—Any cleaning product designed to clean and to remove dried food deposits from oven walls.

**Percent-by-weight**—The total weight of volatile organic compound (VOC) except those VOCs exempted under §115.617 of this title (relating to Exemptions), expressed as a percentage of the total net weight of the product exclusive of the container or package as calculated according to the following equation:

$$\text{Percent-By-Weight} = \frac{(B - C)}{A} * 100$$

A

Where:

A = net weight of unit (excluding container and packaging)

B = weight of VOCs, per unit

C = weight of VOCs, exempted under §115.617, per unit

**Pesticide**—Includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term pesticide will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider to be a pesticide.

**Principal display panel or panels**—That part, or those parts of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

**Product category**—The applicable category which best describes the product as listed in this section and which appears

on the product's principal display panel.

**Product form**—The applicable form which most accurately describes the product's dispensing form, including aerosol products, gels, liquids, pump sprays, and solids.

**Propellant**—A liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

**Pump spray**—A packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.

**Restricted materials**—Any pesticides established for restricted use under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), §3(d), 7 United States Code 136, et seq.

**Retailer**—Any person who sells, supplies, or offers consumer products for sale directly to consumers.

**Retail outlet**—Any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

**Shaving cream**—An aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair.

**Solid**—A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under the American

Society for Testing and Materials (ASTM) D-4359-90.

**Spray buff product**—A product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

**Usage directions**—The text or graphics on the product's label or accompanying literature which describes to the end user how and in what quantity the product is to be used.

**Wasp and hornet insecticide**—Any insecticide product that is designed for use against wasps, hornets, yellow jackets, or bees by allowing the user to spray a high-volume directed stream or burst from a safe distance at the intended pest or its hiding place.

**Wax**—A material or synthetic thermoplastic substance generally of high molecular-weight hydrocarbons or high molecular-weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as caruba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

**Wood floor wax**—Wax-based products for use solely on wood floors.

**§115.610. Applicability.** Except as provided in §115.617 of this title (relating to Exemptions), this subchapter shall apply to any person who sells, offers for sale, supplies, distributes, or manufactures consumer products for use in the State of Texas.

**§115.612. Control Requirements.**

(a) Volatile Organic Compound (VOC) content limits are as follows:

(1) Except as provided in §115.617 of this title (relating to Exemptions), §115.614 of this title (relating to Innovative Products), and §115.613 of this title (relating to Alternate Control Requirements), no person shall sell, supply, offer for sale, distribute, or manufacture for use in Texas any consumer product which was manufactured after January 1, 1995, (January 1, 1996 for Nail Polish Removers, and Glass Cleaners—All Other Forms) and contains VOC in excess of the limits specified in Table III.

Table III

CONSUMER PRODUCT VOLATILE ORGANIC COMPOUNDS (VOC) LIMITATION

<u>Product Category</u>	<u>Weight % VOC</u>
Aerosol Cooking Sprays	18
Air Fresheners	
Single-Phase Aerosols	70
Double-phase Aerosols	30
Liquids/Pump Sprays	18
Solids/Gels	3
Automotive Windshield Washer Fluids <sup>1</sup>	8
Bathroom and Tile Cleaners	
Aerosols	7
All Other Forms	5
Charcoal Lighter Material	See §115.612(g)
Carburetor-Choke Cleaners	75

<sup>1</sup> For Dallas and Tarrant counties the existing regulation effective date was December 1, 1989, for all other nonattainment counties the effective date was April 30, 1993.

Table III  
(continued)

<u>Product Category</u>	<u>Weight % VOC</u>
Dusting Aids	
Aerosol	35
All Other Forms	7
Engine Degreasers	75
Fabric Protectants	75
Floor Polishes/Waxes	
Products for Flexible Flooring Materials	7
Products for Nonresilient Flooring	10
Wood Floor Wax	90
Furniture Maintenance Products	
Aerosols	25
All Other Forms, except Solid or Paste Forms	7
General Purpose Cleaners	10
Glass Cleaners	
Aerosols	12
All other forms	6
Hairsprays	80
Hair Mousses	16

Table III  
(continued)

<u>Product Category</u>	<u>Weight % VOC</u>
Hair Styling Gels	6
Household Adhesives	
Aerosol	75
Contact	80
Construction and Panel	40
General Purpose	10
Insecticides	
Crawling Bug	40
Flea and Tick	25
Flying Bug	35
Foggers	45
Lawn and Garden	20
Insect Repellents	
Aerosols	65
Laundry Prewash	
Aerosols/Solids	22
All Other Forms	5
Laundry Starch Products	5
Nail Polish Removers	75

Table III  
(continued)

<u>Product Category</u>	<u>Weight % VOC</u>
Oven Cleaners Aerosols/Pump Sprays	8
Liquids	5
Shaving Creams	5

(2) Except as provided in §115.617 of this title, §115.614 of this title, and §115.613 of this title, no person shall

sell, supply, offer for sale, distribute, or manufacture for use in Texas any antiperspirant or deodorant which was manufac-

tured after January 1, 1995 and contains high volatility organic compounds (HVOC) in excess of the limits specified in Table IV.

Table IV  
Antiperspirant/Deodorant VOC Limitation

<u>Product Category</u>	<u>Weight % HVOC</u>
Aerosol product Antiperspirant	60
Deodorant	20
Non-aerosol product	0

(b) Notwithstanding the provisions of subsection (a) of this section, a consumer product manufactured prior to January 1, 1995 or other specified date and not complying with the standards listed in Tables III and IV may be sold, supplied, distributed, and offered for sale until November 15, 1996, and not thereafter

(c) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted prior to use, the limits specified in subsection (a) of this section shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, the minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains

(d) The provisions of Tables III and IV shall not apply to a consumer product manufactured prior to the effective date stated in subsection (a) of this section

(e) Notwithstanding the definition of product category in §115.600 of this title

(relating to Definitions), if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC standard is specified in §115.612 of this title (relating to Control Requirements), then the lowest VOC standard shall apply. This requirement does not apply to general purpose cleaners.

(f) For consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, §§136-136y), the effective date of the VOC standards is one year after the date specified in subsection (a) of this section.

(g) The requirements for charcoal lighter material are as follows.

(1) No person shall sell for use in Texas any charcoal lighter material which was manufactured after January 1, 1995 that emits greater than 0.020 pounds of VOC per start when used in accordance with the directions on the label of the product. Emissions are determined using the procedures specified in the South Coast Air

Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991, or other methods which are approved by the Executive Director and are shown to provide equivalent results.

(2) Charcoal lighter materials' labels and accompanying literature shall clearly show usage directions for the product. For liquid charcoal lighter materials, the directions shall accurately reflect the required quantity of charcoal lighter material per pound of charcoal.

(3) Records of emission testing results, physical property data, formulation data, and other information for use in determining compliance with the requirements of this subsection for all charcoal lighter materials must be made available to the Executive Director within 30 days of receipt of such requests.

(4) Notwithstanding any other provision of this subsection, charcoal lighter material products manufactured prior to January 1, 1995, and not complying with the standards of this subsection may be sold, distributed, supplied, and offered for

sale until November 15, 1996, and not thereafter.

(h) The requirements of subsection (a)(1) of this section do not apply to automotive windshield washer fluids that are contained in motor vehicles at the time of initial sale.

*§115.613. Alternate Control Requirements.*

(a) For all persons affected by this undesignated head, any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent or greater.

(b) The Executive Director may exempt a consumer product from the requirements of §115.612(a) of this title (relating to Control Requirements) if a manufacturer obtains a variance pursuant to appropriate California Air Resources Board (CARB) regulations, unless the CARB variance is revoked. The following procedures are applicable:

(1) A manufacturer shall apply in writing to the Executive Director for any variance claimed under this subsection. The application shall include the supporting documentation that demonstrates that the product has been granted a variance pursuant to CARB regulations, and shall include documentation showing the terms and conditions of the CARB variance.

(2) Within 30 days of receipt of a variance application, the Executive Director shall determine whether an application is complete.

(3) Within 90 days after an application has been deemed complete, the Executive Director shall determine whether, under what conditions, and to what extent, a variance from the requirements of §115.612(a) of this title will be permitted. The Executive Director shall notify the applicant of the decision in writing, and shall

specify the terms and conditions of the approved variance.

(4) For any product for which a variance has been granted pursuant to this subsection, the manufacturer shall notify the Executive Director in writing within 30 days of any changes in the product formulation or terms and conditions of the corresponding CARB variance. The Executive Director shall determine what, if any, changes to the variance are needed, and shall notify the manufacturer of the decision in writing.

(5) If volatile organic compounds (VOC) standards are lowered for a product category through any subsequent rulemaking in Texas, all variances granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard.

(c) Any person who cannot comply with the requirements set forth in §115.612(a) because of extraordinary reasons beyond the person's reasonable control may apply in writing to the Executive Director for a variance.

(1) The variance shall be processed in accordance with §103.11 of this title (relating to Types of Hearings). Information submitted to the Executive Director by a variance applicant may be claimed as confidential, and if so claimed, shall be protected from public disclosure to the extent allowed under the Texas Open Records Act.

(2) In considering whether to grant a variance from this rule, the Executive Director shall consider the facts and circumstances bearing on the reasonableness of a product's emissions, including:

(A) the character and degree of injury to or interference with the public's health and physical property associated with product emissions when used for its intended purpose;

(B) the product's social and economic value;

(C) the technical practicability and economic reasonableness of reducing the emissions resulting from the product; and

(D) the total emissions arising from use of the product.

(3) Any variance order shall specify terms and conditions, a date by which final compliance with its terms and conditions will occur, and may contain a condition that specifies increments of progress to assure timely compliance.

(4) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any substantive term or condition of the variance.

(5) If VOC standards are lowered for a product category through any subsequent rulemaking, all variances granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard.

(6) Upon the application of any person, the Executive Director may review, and for good cause, modify or revoke a variance after holding a public hearing in accordance with §103.31 of this title (relating to Calling the Hearing) and §103.33 of this title (relating to Action on Request for a Hearing).

*§115.614 Innovative Products.*

(a) The Executive Director shall exempt a consumer product from the requirements of §115.612(a) of this title (relating to Control Requirements) if a manufacturer demonstrates that, due to some characteristics of the product formulation, design, delivery systems, or other factors, the use of the product will result in equal or less volatile organic compounds (VOC) emissions as compared to.

(1) The VOC emissions from a representative consumer product which complies with the VOC standards specified in §115.612(a), or

(2) The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC standards specified in §115.612(a) VOC emissions shall be calculated using the following equation

$$E_R = E_{NC} \times \frac{VOC_{STD}}{VOC_{NC}}$$

Where:

$E_R$  = The VOC emissions from the noncomplying representative product, had it been reformulated.

$E_{NC}$  = The VOC emissions from the noncomplying representative product in its current formulation.

$VOC_{STD}$  = The VOC standard specified in §115.612(a).

$VOC_{NC}$  = The VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristics of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Executive Director.

(b) For the purposes of this section a representative consumer product is:

(1) one which is subject to the same VOC limit in §115.612(a) as the innovative product;

(2) which is of the same product form, unless the innovative product uses a form which was non-existent in the product category on the effective date of the standards specified in §115.612(a); and

(3) which has at least similar efficacy as other consumer products in the

same category based on generally accepted tests for that category.

(c) A manufacturer shall apply in writing to the Executive Director for any exemption claimed under this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the Executive Director to establish enforceable conditions for granting the exception including the VOC content for the innovative product, and test methods for determining the VOC content. Information submitted to the Commission by a variance applicant may be claimed as confidential, and if so claimed, shall be protected from public dis-

closure to the extent allowed under the Texas Open Records Act.

(d) Within 30 days of receipt of the exemption application the Executive Director shall determine whether an application is complete.

(e) Within 90 days after an application has been deemed complete, the Executive Director shall determine whether, under what conditions, and to what extent, an exemption from the requirements of §115.612(a) will be permitted. The applicant and the Executive Director may mutually agree to a longer time-period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Executive Director shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the

product will meet the emissions reductions specified in subsection (a) of this section, that such emissions reductions can be enforced. If an applicant has been granted an exemption for an innovative product by another state or federal agency whose criteria for exemption meet or exceed those provided for in subsection (a) of this section, the applicant may submit such an exemption as part of the application under this section in lieu of the information required by subsection (c) of this section. In such a case, the Executive Director shall make its determination under this subsection within 45 days after the application has been deemed complete

(f) In granting an exemption for a product, the Executive Director shall establish conditions that are enforceable. These conditions may include the VOC content of the innovative product, dispensing rates, application rates, and any other parameters determined by the Executive Director to be necessary. The Executive Director shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures

(g) For any product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the Executive Director in writing no less than 30 days prior to any change in the product formulation or recommended product usage directions, and shall also notify the Executive Director within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Executive Director in support of the exemption application. Innovative product exemptions granted for products under subsection (f) of this section shall have no force and effect as of the date of notification if any change is made which alters emissions estimates submitted to the Executive Director pursuant to subsection (c) of this section.

(h) If VOC standards are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this subsection, shall have no force and effect as of the effective date of the modified VOC standard. This subsection shall not apply to innovative products which have VOC emissions less than representative products using the new VOC standard, for which a written notification of the product's emissions status versus the lowered VOC standard has been submitted to the Executive Director before the effective date of such standard, or to products manufactured prior to the effective date of the modified standard under a valid innovative product exemption

(i) If the Executive Director believes that a consumer product for which an

exemption has been granted no longer meets the criteria for an innovative product specified in subsection (a) of this section, the Executive Director may modify or revoke the exemption as necessary to assure that the product will meet these criteria. The Executive Director shall not modify or revoke an exemption without first affording the applicant an opportunity for a public hearing in accordance with §103.31 of this title (relating to Calling the Hearing) to determine if the exemption should be modified or revoked.

(j) Any person affected by decisions of the Executive Director pursuant to subsection (e) of this section may appeal to the Commission by filing written notice of appeal with the Executive Director within 30 days after the decision. Such appeal is to be taken by written notification to the Executive Director Section 103.71 of this title (relating to Request for Action by the Commission) should be consulted for the method of requesting Commission action on the appeal.

#### *§115.615 Testing Requirements.*

(a) Testing to determine compliance with the requirements of this subchapter shall be performed using methods which are shown to accurately determine the concentration of volatile organic compounds (VOCs) in a subject product or its emissions

(b) Testing to determine compliance with the requirements of this subchapter may alternatively be demonstrated through calculation of the VOC content from records of amounts of constituents used to manufacture the product. Compliance determination based on these records may not be used unless the manufacturer of a consumer product keeps accurate and updated records of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years

(c) Testing to determine whether a product is a liquid or solid shall be performed using American Society for Testing and Materials (ASTM) D4359-90 (May 25, 1990), which is incorporated by reference herein

(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (September 28, 1990), which is incorporated by reference herein.

(e) Testing to determine compliance with the requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), which is incorporated by reference herein, or other

methods which are approved by the Executive Director and are shown to provide equivalent results.

#### *§115.616. Recordkeeping and Reporting Requirements.*

(a) Each manufacturer of a consumer product subject to §115.612 of this title (relating to Control Requirements) shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date. This date or code shall be displayed on each consumer product container or package which is manufactured after January 1, 1995. The requirements of this provision shall not apply to products which are offered to consumers free of charge for the purpose of sampling the product.

(b) If a manufacturer uses a code indicating the date of manufacture for any consumer product subject to §115.612 of this title, an explanation of the code must be filed with the Executive Director no later than November 15, 1996.

(c) Records of product volatile organic compounds (VOC) content, based upon testing or chemical composition records as set forth in §115.615 of this title (relating to Testing Requirements), must be made available to the Executive Director within 30 days of receipt of such requests. Information submitted in response to such requests may be claimed as confidential, and if so claimed shall be protected from public disclosure to the extent allowed under the Texas Open Records Act.

(d) On or before January 1, 1996, and no later than July 1 of each second year thereafter, each manufacturer subject to §115.612(a)(2) of this title shall submit to the Executive Director a written report. Information submitted pursuant to this subsection may be claimed as confidential, and if so claimed shall be protected from public disclosure to the extent allowed under the Texas Open Records Act. The report shall include the following information.

- (1) the brand name for each antiperspirant and deodorant product;
- (2) the owner of the trademark or brand name;
- (3) the product forms;
- (4) the annual sales in Texas in pounds per year and the method used to calculate annual sales;
- (5) the total VOC content in percent by weight which

( ) has a vapor pressure of 2.0 millimeters mercury (mm Hg) or less at 20 degrees Centigrade; or

(B) consists of 10 carbon atoms, if the vapor pressure is unknown;

(6) the total HVOC and MVOC content in percent by weight.

**§115.617. Exemptions.**

(a) This rule shall not apply to any consumer product manufactured in Texas for shipment and use outside of Texas

(b) The provisions of this rule shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in Texas a consumer product that does not comply with the volatile organic compounds (VOC) standards specified in §115.612 of this title (relating to Control Requirements), as long as the manufacturer or distributor can demonstrate that the consumer product is intended for shipment and use outside of Texas, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed in Texas. This subsection does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in Texas.

(c) The requirements of §115.612(a) shall not apply to products and colorants up to a combined level of 2.0% VOC by weight contained in any consumer product.

(d) The requirements of §115.612(a)(1) shall not apply to any VOC that:

(1) contains more than 12 carbon atoms per molecule, and for which the vapor pressure is unknown;

(2) has a vapor pressure of 0.1 millimeter mercury (mm Hg) or less at 20 degrees Celsius; or

(3) has a melting point higher than 20 degrees Celsius and does not sublime (i.e., does not change directly from a solid into a gas without melting), if the vapor pressure is unknown.

(e) The requirements of §115.612(a)(2) shall not apply to any VOC that:

(1) contains more than 10 carbon atoms per molecule, and for which the vapor pressure is unknown, or

(2) has a vapor pressure of 2 mm Hg or less at 20 degrees Celsius

(f) The requirements of §115.616(b) of this title (relating to Recordkeeping Requirements) shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, §136/136y).

(g) The requirements of §115.612(a) of this title shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

(h) The requirements of §115.612(a) of this title shall not apply to adhesives sold in containers of one fluid ounce or less.

(i) The requirements of §115.612(a) of this title shall not apply to bait-station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5.0% active ingredients.

(j) The requirements of §115.612(a) of this title shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOC under §115.10 of this title (relating to Definitions) or exempted under subsection (d) of this section

**§115.619. Counties and Compliance Schedules.** All affected persons within the State of Texas shall be in compliance with the requirements of this undesignated head as soon as practicable, but in any case no later than the dates specified in §115.612 of this title (relating to Control Requirements), §115.613 of this title (relating to Alternate Control Requirements), §115.614 of this title (relating to Innovative Products), and §115.617 of this title (relating to Exemptions).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on December 17, 1993.

TRD-9334029

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption. May 15, 1994

For further information, please call. (512) 463-8159

◆ ◆ ◆  
**• 30 TAC §§115.612-115.615,  
115.617, 115.619**

*(Editor's note The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Texas Health and Safety Code, the Texas Clean Air

Act (TCAA), §382.017, which provides the Texas Natural Resource Conservation Commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**§115.612. Control Requirements.**

**§115.613. Alternate Control Requirements.**

**§115.614. Inspection Requirements.**

**§115.615. Testing Requirements.**

**§115.617. Exemptions.**

**§115.619. Counties and Compliance Schedules.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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**Chapter 325. Certificates of  
Competency**

**• 30 TAC §§325.2, 325.3, 325.5,  
325.6, 325.11, 325.15**

The Texas Natural Resource Conservation Commission (Commission) proposes amendments to §§325.2, 325.3, 325.5, 325.6, 325.11, and 325.15, concerning the evaluation of work experience towards wastewater operator certification, the payment of an application fee instead of an issuance fee for certification, options for enforcement actions taken by the executive director and commission, and the payment of an application fee for perpetual certification. These amendments are proposed in order to implement certain provisions of the Texas Water Code, §26.0301, which went into effect September 1, 1987. These amendments are proposed in order to delineate eligibility requirements and procedures for those applying for wastewater operator certificates of competency.

Section 325.2(d) is amended to reflect qualification requirements for education and years of experience. Section 325.2(e) is amended by deleting the statement that all experience must be actual facility experience and by requiring that at least one-half of a plant operator's total wastewater experience be in actual, "hands-on" treatment plant operation. Section 325.2(g) is amended, though not substantively, by deleting any reference to an imple-