

TEXAS REGISTER

IN THIS ISSUE

Volume 20, Number 68 September 8, 1995

Page 6965-7060

Texas Ethics Commission

Ethics Advisory Opinion Request	43 TAC §§18.40-18.42.....	6991
AOR 309-313.....	43 TAC §§18.50-18.61.....	6992
6975	43 TAC §§18.70-18.72.....	7004

Emergency Sections

Texas Department of Agriculture	43 TAC §§18.80-18.94.....	7007
Boll Weevil Control	Oversize and Overweight Vehicles and Loads	
4 TAC §6.4.....	43 TAC §28.2.....	7013
6977	43 TAC §§28.10, 28.11, 28.14, 28.17.....	7014
Texas Youth Commission	Permits for Over Axle and Over Gross Weight Tolerances	
Admission and Placement	43 TAC §28.30.....	7015
37 TAC §85.47.....		
6977		

Texas Department of Transportation

Vehicle Titles and Registration	Proposed Sections	
43 TAC §17.23.....	Texas State Board of Public	
6978	Accountancy	
43 TAC §§18.1-18.2.....	Certification of a CPA	
6979	22 TAC §511.106.....	7019
43 TAC §§18.10-18.18.....	Quality Review	
6981	22 TAC §527.4.....	7019
43 TAC §§18.30-18.33.....		
6989		

Part I - Volume 20, Number 68

Contents Continued Inside



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as of January 1, 1992, shall schedule a review to commence no later than December 31, 1994, and schedule an additional review for each successive three-year increment thereafter. Each practice unit shall enroll with one of the sponsoring organizations approved in accordance with paragraph (6) of this section. Each practice unit shall adopt the review date assigned by the appropriate sponsoring organization and shall notify the board of such date within 30 days of its assignment.

(B) Each new practice unit/licensee registered with the board after January 1, 1992, shall enroll in a program of an approved sponsoring organization within one year from its initial licensing date, shall adopt the review date assigned by the sponsoring organization[,] and schedule an additional review for each successive three-year increment thereafter, and shall notify the board of [such] each date and do so within 30 days of its assignment.

(C) (No change.)

(3)-(8) (No change.)

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 August 24, 1995.

TRD-9511061

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 9, 1995

For further information, please call: (512) 505-5566

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, 115.612, 115.614, 115.617

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.600, 115.612, 115.614 and 115.617, concerning Consumer Products. The proposed changes to

§115.600, concerning Definitions, substitute the term "consumer" for "person" in the definition of "consumer product," correcting a previous oversight; delete the definition of "device," because the term is not used in the consumer products regulation; and simplify the definition of "pesticide," eliminating use of the term "device". Although the term "pesticide" also occurs only within the definitions, it is useful in establishing areas not covered by the control requirements, and is not proposed for deletion

The proposed amendment to §115.612, concerning Control Requirements, deletes the category of "Insect Repellents Aerosols" from the Table of Standards (Table III). The proposed change is in response to a manufacturer's petition to delete this standard. The modified, compliant insect repellent formulations have not gained widespread consumer acceptance, and mandating their use presents the potential for under-use and the risk of increased insect-borne diseases. The deletion of this category also makes the regulations in Texas more consistent with other states' consumer product standards and the current direction of national rulemaking.

The proposed amendments to §115.614, concerning Innovative Products, provide for the registration of an innovative product just prior to its introduction into the Texas market. The current approach requires a manufacturer to apply for any claimed exemption, and must include supporting documentation that demonstrates to the satisfaction of the TNRCC that emissions from the innovative product deserve such an exemption. Currently, sale of the new innovative product is not allowed until after the exemption is approved by the TNRCC. The pre-market approval has the drawback, in this intensely competitive industry, that the resulting loss of confidentiality prior to new product release may reduce the time a competitor needs to respond to a new product, undermining the ability of the innovative company to recoup its development costs. The proposed amendments to §115.614 allow an innovative product to be marketed upon registration without waiting for approval from the TNRCC, thus avoiding unnecessary lengthy review, further encouraging innovative approaches for reducing volatile organic compounds (VOC). If, upon evaluation, a lack of equivalent reductions is determined, then enforcement procedures sufficient to deter noncompliance and make up lost State Implementation Plan (SIP) emission reduction credits would be implemented.

The proposal retains the current approval process, which is renumbered as paragraph (1) of subsection §115.614(c), and adds the alternative registration process, paragraph (2). Existing subsections §115.614(j) and (k) are proposed to be deleted, because the referenced procedural rules have been repealed, although the opportunity for hearing continues to be authorized under the Texas Administrative Procedures Act.

The proposed changes to §115.617, concerning Exemptions, corrects the exemption for adhesives sold in containers of one fluid ounce or less by eliminating reference to a measure of weight. Fluid ounces are units of volume measurement.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed sections are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be the continued availability of consumer accepted aerosol insect repellents effective in reducing insect-borne diseases, a potential increase in innovative, low emission consumer products, and a more understandable environmental regulation. There will be no or minimal effect on small businesses or persons who are required to comply with the rules as proposed. The deletion of the aerosol insect repellent standard could potentially result in costs to some manufacturers who need to adjust marketing plans because a previously anticipated increase in sales of high water content aerosols or aerosol substitutes does not materialize. These costs, if any, would be temporary only. Since California has exempted certain high VOC aerosol insect repellents from the standards, there have been no previous market shifts due to insect repellent VOC standards, and probably little or no perceived need among manufacturers to adjust marketing plans.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95127-115-AI. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Brian Foster at (512) 239-1930.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512)

239-4900. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), 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.

The proposed amendments affect the Health and Safety Code, §382.017

§115.600. Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (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 subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Consumer product Any substance, product, or article, held by any consumer [person], the use, consumption, storage, disposal, or destruction of which may result in the release of volatile organic compounds. This does not include fuels, fuel additives, motor vehicles, non-road vehicles, non-road engines, or architectural coatings.

[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 microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.]

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 anything [substance, mixture of substances, or device] which the U.S. Environmental Protection Agency does not consider to be a pesticide.

§115.612. Control Requirements.

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

(1) Except as provided in §§115.613, 115.614, and 115.617 of this title (relating to Alternate Control Requirements, Innovative Products, and Exemptions), 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 con-

tains VOC in excess of the limits specified in Table III.

Figure 1: 30 TAC §115.612(a)(1)

(2) (No change.)

(b)-(g) (No change.)

§115.614. Innovative Products.

(a) [The Executive Director shall exempt a] A consumer product shall be exempt from the requirements of §115.612(a) of this title (relating to Control Requirements) if a manufacturer demonstrates to the satisfaction of the Executive Director that, due to some characteristic 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)-(2) (No change.)

(b) (No change.)

(c) A manufacturer shall comply with one of the following paragraphs [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 an exemption 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.]

(1) A manufacturer may apply in writing to the Executive Director for a pre-market approval of an exemption as follows:

(A) 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 Texas Natural

Resource Conservation Commission (TNRCC or Commission) by an exemption 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.

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

(C) 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) of this title 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 ensure that emissions from the product will meet the emissions reductions specified in subsection (a) of this section, and that such emissions reductions can be enforced.

(D) 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 such a case, the Executive Director shall make its determination under subsection (e) of this section within 45 days after the application has been deemed complete.

(E) 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.

(F) All exemptions previously granted by the Executive Director in accordance with this section, as adopted effective May 27, 1994, are

deemed to be approved under this paragraph.

(2) In lieu of applying for pre-market approval under paragraph (1) of this subsection, a manufacturer may register a claim for an exemption. A consumer product shall be exempt from the requirements of §115.612(a) of this title if:

(A) The product meets the requirements of subsections (a) and (b) of this section, and the manufacturer files a registration document in writing with the Executive Director, certifying that the emissions meet these requirements, and provides the information required in subparagraph (B) of this paragraph. Retail sales in Texas of the innovative product may commence five working days after receipt of the registration document by the Executive Director. Affirmative approval of the registration by the TNRCC is not required.

(B) An innovative product registration must briefly set forth any claims which form the basis for the innovative nature of the product, such as product formulation, design, delivery system, usage directions, or other factors. Additional claims not set forth in the registration may not be used to establish the innovative nature of the product, however, a manufacturer may subsequently provide additional elaboration as to the details of registered claims as necessary to satisfy an evaluation. Prior to registration, a manufacturer must have sufficiently tested the product to clearly establish the product's VOC emissions and innovative nature.

(C) If noncompliance of a registered innovative product is reported to or otherwise suspected by the TNRCC, then the TNRCC may institute an evaluation of the manufacturer's registration claims. Under this evaluation, the manufacturer shall be required to provide basic information supporting or not supporting a product's innovative claims to the Executive Director. The Executive Director may also require additional review of supporting documentation, until the Executive Director is satisfied with the legitimacy of the innovative claims. Information submitted to the Executive Director pursuant to an evaluation 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. Additional testing, completed after the submittal of an innovative product registration, may not be used to further substantiate the manufacturer's claims.

(D) If, through an evaluation, the Executive Director determines that a registered innovative product is non-compliant with the innovative product provisions under subsection (a) of this section, then the manufacturer shall be required to purchase or provide VOC emission reduction credits in each nonattainment area equivalent to twice the excess emissions determined to have occurred in the respective nonattainment area due to sale of the non-compliant product. The manufacturer shall also be required to reformulate or withdraw the non-compliant product from the market in Texas. Civil penalties may also be assessed.

(E) Neither pre-market review nor subsequent evaluation shall create an enforcement waiver and the TNRCC may revisit innovative claims at any time the Executive Director has reason to believe that substantive circumstances have changed.

(F) The Executive Director will not consider, and the applicant may not rely upon, innovative product claims or other information submitted as confidential on a registration document.

[(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) of this title 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), and that such emissions reductions can be enforced.]

[(f) 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), the applicant may submit such an exemption as part of the application under this section. In such a case, the Executive Director shall make its determination under subsection (e) of this section within 45 days after the application has been deemed complete.]

[(g) 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.]

(d) [(h)] For any product for which an exemption has been granted or registration filed 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 knows or should have known of] or any information which would alter the emissions estimates submitted to the Executive Director in support of the exemption application or registration. [Innovative product exemptions granted for products under this section shall have no force and effect as of the date of any change which alters emissions estimates submitted to the Executive Director pursuant to subsection (c) of this section.]

(e) [(i)] If VOC standards are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted or registrations filed 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 or registration.

(f) [(j)] 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.]

[(k) Any person affected by decisions of the Executive Director pursuant to 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.]

§115.617. Exemptions.

(a)-(g) (No change.)

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

(i)-(j) (No change.)

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 August 23, 1995.

TRD-9511094 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

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**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part XIII. Texas
Commission on Fire
Protection**

**Chapter 401. Practice and
Procedure**

**Subchapter A. General Provi-
sions and Definitions**

• 37 TAC §401.11

The Texas Commission on Fire Protection proposes an amendment to §401. 11, concerning presentations to the commission. The amendment changes the name of the section to "Conduct of Commission and Advisory Committee Meetings", and provides the presiding officer of the commission or advisory committees with discretion to employ any generally recognized parliamentary procedures for the conduct of commission or committee meetings and to set reasonable time limits for discussion on agenda items. In addition, subsection (c) is amended to direct agenda requests to the General Counsel and Executive Director, to lower from 45 to 30 the

advance deadline for agenda requests, and to provide that the decision to place a matter on an agenda will rest with the appropriate presiding officer instead of the executive director.

Jack Woods, General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Woods also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that commission and advisory committee meetings will be conducted in a more orderly manner. The submission of agenda requests to the General Counsel will insure compliance with the Texas Open Meetings Act. There are no additional costs of compliance for small or large businesses or for individuals required to comply with the section as amended.

Comments on the proposal may be submitted to: Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties.

Texas Government Code, §419.008 is affected by the proposed amendment.

§401.11. Conduct of Commission and Advisory Committee Meetings [Presentations to the Commission].

(a) (No change.)

(b) Discretion of the presiding officer [chairman of the commission]. The presiding officer of the commission or the advisory committee, as the case may be, shall have discretion to employ any generally recognized system of parliamentary procedures, including, but not limited to Robert's Rules of Order for the conduct of commission or committee meetings, to the extent that such parliamentary procedures are consistent with the Texas Open Meetings Act or other applicable law and these rules. The presiding officer shall also have discretion in setting reasonable limits on the time to be allocated for each matter on the agenda of a scheduled commission meeting or advisory committee meeting and for each presentation on a particular agenda item. If several persons wish to address the commission or advisory committee on the same agenda item, it shall be within the discretion of the chair to request that persons who wish to address the same side of the issue coordinate their comments, or limit their comments to an expression in favor of views previously articulated by persons speaking on the same side of an issue.

(c) Requests that issues be placed on an agenda for discussion. Persons who

wish to bring issues before the commission shall first address their request to the General Counsel and Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286. Such requests should be submitted at least 30 [45] days in advance of commission meetings, but in no event less than 15 days. The decision whether to place a matter on an agenda for discussion before the full commission, or alternatively before a commission advisory committee, or with designated staff members, shall be within the discretion of the appropriate presiding officer [executive director].

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 August 30, 1995.

TRD-9510985 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: October 9, 1995

For further information, please call: (512) 918-7184

◆ ◆ ◆
Chapter 407. Administration

• 37 TAC §407.1

The Texas Commission on Fire Protection proposes new §407.1, concerning inscription on the Texas Commission on Fire Protection vehicles. The new section establishes the primary use of agency vehicles without inscriptions and the purpose served by not inscribing the vehicles to carry out assignments that require agency personnel to accomplish their tasks undetected.

Michael E. Hines, Executive Director, has determined that for the first five-year period the new section is in effect there will be fiscal implications for the state. The commission will save approximately \$70 for each vehicle not required to be inscribed. During the first year this section will be in effect, the commission will save approximately \$1,400 in the cost of inscribing agency vehicles. There will be no fiscal implications for local government.

Mr. Hines also has determined that year for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that agency personnel will be able to accomplish their tasks undetected to enforce laws administered by the commission, in compliance with Texas Civil Statutes, Article 6701m-1. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new section.

Comments on the proposal may be submitted to: Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new section is proposed under Texas Government Code, §419.008, which provides