

The Texas Natural Resource Conservation Commission (commission) adopts amendments to Subchapter G (Consumer-Related Sources; Consumer Products), §115.616, concerning Recordkeeping and Reporting Requirements. The amendments are adopted with changes to the proposed text as published in the May 7, 1996, *Texas Register* (21 TexReg 3908).

Chapter 115, Subchapter G (“consumer products rule”) establishes volatile organic compound (VOC) limitations, applicable statewide, for 24 categories of consumer products such as household cleaners, hairsprays, deodorants, and windshield washer fluid. Prior to this adoption, §115.616(a) of the consumer products rule required that each consumer product container or package display the day, month, and year of manufacture, or a code indicating that date, if it is manufactured after January 1, 1995. As an alternative to the product dating requirement, the current adoption allows manufacturers of regulated consumer products to display information on the product container or package, stating that the product was manufactured after the rule’s applicable compliance date. The amendments offer additional flexibility and cost savings to regulated industries, particularly small businesses which might not otherwise provide date stamping, without affecting the agency's ability to effectively enforce the rule.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, Section 2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to provide an alternative method of complying with the rule’s date stamping requirement. The rule amendments will substantially advance this specific purpose by allowing certain identifying information to be displayed on the package container or label.

Promulgation and enforcement of the rule amendments will not affect private real property which is the subject of the rule because the change is only to provide an alternative method of rule compliance.

A public hearing on this proposal was held May 28, 1996, at the commission's Austin offices. Written comments were received from the Chemical Specialties Manufacturers Association (CSMA), the International Sanitary Supply Association (ISSA), and an individual in support of the proposed amendments; and from the United States Environmental Protection Agency (EPA) Region 6 Dallas office in general support of the amendments.

An individual expressed support for the rule amendments, since they would make enforcement easier. The CSMA supported the rule amendments, stating that they balanced regulatory and industry needs while maintaining flexibility. The ISSA also supported the amendments, citing cost savings to small businesses, facilitation of interstate marketing of consumer products, and no hindrance to state enforcement capabilities.

The commission acknowledges support for the amendments.

The EPA suggested revising the rule to simply allow a statement on the product package or label identifying the product's allowable VOC limitation. The EPA stated that modifying the rule in this manner would eliminate the need for case-by-case executive director approval, simplify application and enforcement of the rule, and provide useful information to the consumer.

The staff supports the EPA's intent to further streamline the rule, thus retaining flexibility while eliminating the need for executive director approval. In the interests of simplifying rule application, slightly different rule language has been added to allow, as an alternative to date stamping or coding, a statement that the product was manufactured after the applicable compliance date. This approach still provides the agency with necessary information for enforcement purposes, with the added advantage that it parallels the former requirement to display the date of manufacture or a code indicating that date.

The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

SUBCHAPTER G : CONSUMER-RELATED SOURCES

CONSUMER PRODUCTS

§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 container or package for any consumer product regulated under this subchapter, and manufactured after January 1, 1995, one of the following:

(1) the day, month, and year on which the product was manufactured;

(2) a code indicating such date; or

(3) a statement that the product was manufactured after a certain day, month, and year which is later than January 1, 1996.

(b) - (d) (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 July 24, 1996.