

The Texas Natural Resource Conservation Commission (commission) proposes to amend §115.600, concerning Definitions.

#### EXPLANATION OF PROPOSED RULE

This amendment is proposed to amend the commission's consumer products rule to exclude a new type of insecticide designed to kill house dust mites from the volatile organic compound (VOC) limitation applicable to other crawling bug insecticides. The insecticide formulation necessary to kill house dust mites requires that the VOC content exceed the limitation contained in §115.612(a). The amendment adds language to the §115.600 definition of "crawling bug insecticide" to differentiate a "house dust mite" from other crawling bugs and a "house dust mite product" from crawling bug insecticides. This rule amendment will permit the sale of such products in Texas. The amendment will also number the individual definitions in the section to conform to new *Texas Register* standards.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the new section as proposed is in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the section.

#### PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be expansion of markets for the sale of dust mite insecticides in Texas and the resulting benefits to

consumers and users from control of insects by these insecticides. There are no anticipated economic costs to any person, including any small business, required to comply with the section as proposed.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to differentiate a “house dust mite” from other crawling bugs and a “house dust mite product” from crawling bug insecticides to exclude house dust mite insecticides from the VOC limitation contained in the subchapter. This proposal does not constitute a taking of private, real property.

#### COASTAL MANAGEMENT PLAN

The commission has determined that this proposed rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Tex. Nat. Res. Code Ann. §33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC

Chapters 501-506), and the TNRCC's rules in 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and §505.22(a), and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with applicable CMP goals and policies. The commission has reviewed this proposed rulemaking action for consistency, and has determined that this proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations (40 CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This proposal does not change existing requirements which already comply with regulations at 40 CFR, and is therefore consistent with this policy.

Interested persons may submit comments on the consistency of the proposed rule with the CMP goals and policies during the public comment period.

#### PUBLIC HEARING

A public hearing on this proposal will be held on June 29, 1998, at 11:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98015-115-AI. Comments must be received by 5:00 p.m., July 6, 1998. For further information, please contact Randy Hamilton, (512) 239-1512, or Steve Ortiz, (512) 239-2008, of the Air Policy and Regulations Division.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.012 and §382.017. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements Health and Safety Code, §382.012.

## **SUBCHAPTER G : CONSUMER-RELATED SOURCES**

### **CONSUMER PRODUCTS**

#### **§115.600**

##### **§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.

(1) 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.

(2) 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 a use requiring a license under the Texas Structural Pest Control Act, Article 135B-6.

(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.

(3) 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 does not include products that are used on the human body, products that function primarily as cleaning products, or disinfectant products claiming to deodorize by killing germs on surfaces. It does include spray disinfectants and other products that are expressly represented for use as air fresheners. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label and packaging, and in the product's literature and advertising may be considered. The presence of and representations about a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

(4) 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).

(5) 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.

(6) ASTM - The American Society for Testing and Materials.

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

(8) **Bait station insecticide** - A container enclosing an insecticidal bait, 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.

(9) **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.

(10) **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.

(11) **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.

(12) **Construction and panel adhesive** - Any one-component household adhesive having gap filling capabilities, and which distributes stress throughout the bonded area resulting in a reduction or elimination of mechanical fasteners. These materials are applied from caulking cartridges.

(13) Consumer - Any person who purchases or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not considered consumers of that product.

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

(15) Contact adhesive - Any household adhesive that:

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

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

(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.

(16) 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.

(17) Cooking spray aerosols - Any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

(18) 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, or any house dust mite product. For the purposes of this definition only:

(A) House dust mite product - a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

(B) House dust mite - mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

(19) Deodorant - 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.

(20) 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 United States Code (USC) §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.

(21) 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.

(22) Double-phase aerosol air freshener - An aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

(23) 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.

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

(25) Executive director - The executive director of the Texas Natural Resource Conservation Commission, or his or her delegate.

(26) 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.

(27) 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.

(28) **Flexible flooring material** - Asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

(29) **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, or coatings subject to architectural coatings regulations.

(30) **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.

(31) **Fragrance** - A substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of two millimeters mercury at 20 degrees Centigrade, which is added to a consumer product to impart an odor or scent or to counteract a malodor.

(32) **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.

(33) **Gel** - A colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

(34) **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.

(35) **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. This does not include non-water-based degreasers.

(36) **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, or photocopying machines.

(37) **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.

(38) **Hair mousse** - A hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

(39) **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.

(40) **High volatility organic compound (HVOC)** - Any VOG [volatile organic compound] that exerts a vapor pressure greater than 80 millimeters mercury when measured at 20 degrees Centigrade.

(41) **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.

**(42) 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.

**(43) 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.

**(44) 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.

**(45) 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.

**(46) 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.

**(47) 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.

(48) **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.

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

(50) **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.

(51) **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.

(52) **Liquid** - A substance or mixture of substances which is capable of 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.

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

(54) **Medium volatility organic compound (MVOC)** - Any VOC [volatile organic compound] that exerts a vapor pressure greater than two millimeters mercury and less than or equal to 80 millimeters mercury when measured at 20 degrees Centigrade.

(55) **Nail polish** - Any clear or colored coating designed for application to the fingernails or toenails and including, but not limited to, lacquers, enamels, acrylics, base coats, and top coats.

(56) **Nail polish remover** - A product designed to remove nail polish and coatings from fingernails or toenails.

(57) **Non-aerosol product** - Any product that is not dispensed by a pressurized spray system.

(58) **Nonresilient flooring** - Flooring of a mineral content which is not flexible, including but not limited to, terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

(59) **Oven cleaner** - Any product designed to clean or remove dried food deposits from oven walls.

(60) **Percent-by-weight** - The total weight of VOC [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 of this title, per unit

**(61) 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 which the U.S. Environmental Protection Agency does not consider to be a pesticide.

**(62) 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.

**(63) Product category** - The applicable category which best describes the product as listed in this section.

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

**(65) 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.

**(66) 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.

(67) **Restricted materials** - Any pesticides established for restricted use under FIFRA, §3(d) (7 USC §136, etc seq.) [Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 United States Code §136, et seq.]

(68) **Retailer** - Any person who sells, supplies, or offers consumer products for sale directly to consumers.

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

(70) **Single-phase aerosol air freshener** - An aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

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

(72) **Solid** - A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of flow as determined under the American Society for Testing and Materials (ASTM) D-4359-90.

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

(74) **Subsequent sale** - The bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than a lien, of a motor vehicle which has been registered or licensed outside of Texas, save and except when such vehicle is not required under law to be registered or licensed in Texas or elsewhere; and any such bargain, sale, transfer, or delivery of a motor vehicle after same has been registered or licensed shall constitute a subsequent sale, irrespective of where bargain, sale, transfer, or delivery occurred.

(75) **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.

(76) **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.

(77) **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 carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

(78) **Wood floor wax** - Wax-based products for use solely on wood floors.