

SUBCHAPTER G: CONSUMER-RELATED SOURCES
DIVISION 1: AUTOMOTIVE WINDSHIELD WASHER FLUID
§§115.600, 115.610, 115.612, 115.613, 115.615 - 115.617, 115.619
Effective February 19, 2004

§115.600. Consumer Products 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 division (relating to Automotive Windshield Washer Fluid), shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§3.2, 101.1, and 115.10 of this title (relating to Definitions).

(1) **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).

(2) **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.

(3) **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 volatile organic compounds. This does not include fuels, fuel additives, motor vehicles, non-road vehicles, non-road engines, or architectural coatings.

(4) **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.

(5) **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.

(6) **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 Celsius, which is added to a consumer product to impart an odor or scent or to counteract a malodor.

(7) **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.

(8) **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.

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

(10) **Percent by weight** - The total weight of volatile organic compounds (VOCs) 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:

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

Where:

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

B = weight of VOCs, per unit

C = weight of VOCs exempted under 30 TAC §115.617, per unit

(11) **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.

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

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

(14) **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.

(15) **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.

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§115.610. Applicability.

Except as provided in §115.617 of this title (relating to Exemptions), this division (relating to Automotive Windshield Washer Fluid) shall apply to any person who sells, offers for sale, supplies, distributes, or manufactures automotive windshield washer fluid for use in the State of Texas.

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§115.612. Control Requirements.

(a) Except as provided in §115.613 and §115.617 of this title (relating to Alternate Control Requirements; and Exemptions), no person shall sell, supply, offer for sale, distribute, or manufacture for use in Texas any automotive windshield washer fluid which was manufactured after January 1, 1995 and contains volatile organic compounds in excess of 23.5% by weight.

(b) For automotive windshield washer fluid for which the usage directions specifically state 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 usage directions shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as extremely cold weather (below zero degrees Fahrenheit).

(c) The requirements of subsection (a) of this section do not apply to automotive windshield washer fluids that are contained in motor vehicles at the time of initial sale, or at the time of subsequent sale of vehicles registered or licensed outside of Texas.

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§115.613. Alternate Control Requirements.

(a) Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Automotive Windshield Washer Fluid) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent or greater.

(b) Any person who cannot comply with the requirements set forth in §115.612(a) of this title (relating to Control Requirements) because of extraordinary reasons beyond the person's reasonable control may apply in writing to the executive director for alternate control requirements.

(1) The application shall set forth the following:

(A) the specific grounds on which the alternate control requirements order is sought;

(B) the requested terms and conditions; and

(C) the specific method(s) by which compliance with the requested terms and conditions will be achieved.

(2) Information submitted to the executive director by an 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.

(3) In considering whether to grant a deviation from §115.612(a) of this title, 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.

(4) Any alternate control requirements 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.

(5) An alternate control requirements order shall cease to be effective upon failure of the party to whom the order was granted to comply with any substantive term or condition of the order.

(6) If volatile organic compound standards are lowered for a product category through any subsequent rulemaking, all alternate control requirements orders granted for products in the product category shall have no force and effect as of the effective date of the modified volatile organic compound standard.

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§115.615. Testing Requirements.

(a) Testing to determine compliance with the requirements of this division (relating to Automotive Windshield Washer Fluid) 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 division 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 automotive windshield washer fluid 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.

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§115.616. Recordkeeping and Reporting Requirements.

(a) Each manufacturer of automotive windshield washer fluid subject to §115.612 of this title (relating to Control Requirements) shall clearly display on each container or package for any automotive windshield washer fluid regulated under this division (relating to Automotive Windshield Washer Fluid), 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) If a manufacturer uses a code indicating the date of manufacture for any automotive windshield washer fluid subject to §115.612 of this title, an explanation of the code must be filed with the executive director no later than January 1, 1995.

(c) Records of product volatile organic compounds 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.

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§115.617. Exemptions.

(a) This division (relating to Automotive Windshield Washer Fluid) shall not apply to any automotive windshield washer fluid manufactured in Texas for shipment and use outside of Texas.

(b) The provisions of this division shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in Texas an automotive windshield washer fluid 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 automotive windshield washer fluid is intended for shipment and use outside of Texas, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the automotive windshield washer fluid is not

distributed in Texas. This subsection does not apply to automotive windshield washer fluid that is sold, supplied, or offered for sale by any person to retail outlets in Texas.

(c) The requirements of §115.612(a) of this title shall not apply to fragrances and colorants up to a combined level of 2.0% VOC by weight contained in any automotive windshield washer fluid.

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

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

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

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§115.619. Counties and Compliance Schedules.

All affected persons within the State of Texas shall continue to comply with the requirements of this division (relating to Automotive Windshield Washer Fluid) as required by §115.930 of this title (relating to Compliance Dates).

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