

(2) the age of the individual at the time the crime was committed, and the amount of time that has elapsed since the last criminal activity;

(3) the conduct and work activity of the individual prior to the following the criminal activity;

(4) evidence of rehabilitation; and

(5) other evidence of fitness to practice as a professional land surveyor.

(d) Crimes relating to the practice of surveying include, but are not limited to the following:

(1) criminal negligence in the practice of surveying;

(2) soliciting, offering, giving or receiving any form of bribe in the practice of surveying;

(3) the unauthorized use of property, funds or proprietary information belonging to another in the practice of surveying;

(4) acts relating to the acquisition, use or dissemination of confidential information related to surveying; and

(5) any violation as an individual or as a consenting party of any provision of the Professional Land Surveying Practices Act (Title 6, Occupations Code, Subtitle C) [(Article 5282e)].

(e) The application of any applicant deemed ineligible for registration because of a prior criminal conviction will be proposed for rejection and the applicant will be provided the following information in writing:

(1) the reason for rejecting the application;

(2) notice of the administrative procedure used to conduct an informal conference and contested case hearing to show compliance with all requirements of the law for registration as a professional surveyor; and

(3) notice that upon exhausting of the administrative appeal, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final.

(f) The Board shall revoke the certificate of registration of any registrant incarcerated or jailed as a result of conviction for a felony. The certificate of registration of any registrant shall also be revoked for felony probation revocation, revocation of parole, or revocation of mandatory supervision regardless of the date of the original conviction.

(g) The Board may revoke the certificate of registration of any registrant convicted of a misdemeanor or a felony [without incarceration] if the crime directly relates to the duties and responsibilities as a professional surveyor.

(1) Any registrant whose certificate of registration has been revoked under the provisions of this subsection will be advised in writing of the right to apply for registration. The application criteria are established in subsections (b) and (c) of this section.

(2) Any registrant whose certificate of registration has been revoked under the provisions of this subsection and who has exhausted administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision or the decision is not subject to appeal.

(h) A person is convicted when an adjudication of guilt on an offense is entered against that person by a court of competent jurisdiction whether or not:

(1) the sentence is subsequently probated and the person is discharged from probation or community supervision; or

(2) the accusation, complaint, information or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense.

(i) Imposition of deferred adjudication community supervision is not a conviction.

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

Filed with the Office of the Secretary of State on September 10, 2003.

TRD-200305890

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: October 26, 2003

For further information, please call: (512) 452-9427

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER G. CONSUMER-RELATED SOURCES

The Texas Commission on Environmental Quality (commission) proposes amendments to §§115.600, 115.610, 115.612, 115.613, 115.615 - 115.617, and 115.619; the repeal of §115.614; and corresponding revisions to the state implementation plan (SIP).

The commission proposes these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds, in order to delete requirements which are duplicated by a federal consumer products rule and to update and correct a variety of references in the commission consumer products rule. These amended and repealed sections and corresponding revisions to the SIP will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission adopted the existing Chapter 115 consumer products rule on May 4, 1994 in response to the 1990 Amendments to the Federal Clean Air Act and EPA requirements for states to develop and adopt rules relating to the rate-of-progress requirement. The Rate-of-Progress SIP revision and associated rules were required to achieve and maintain volatile organic compound (VOC) emissions levels by 1996 that are 15% below the

1990 base year levels in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The existing Chapter 115 consumer products rule established VOC content standards for various consumer products, and established compliance dates for the requirements in order to allow manufacturers time to develop new product formulations. The final compliance date was January 1, 1995, except for two product categories which had a January 1, 1996 compliance date. The Chapter 115 consumer products rule applies in all counties in the state to maximize the effectiveness of these rules and the subsequent reduction in VOC emissions, and was based in large part upon the California Air Resources Board (CARB) statewide consumer products rule and the standards of the CARB rule that had a January 1, 1996 compliance date.

In the September 11, 1998 issue of the *Federal Register* (63 FR 48819), the EPA published national VOC emission standards as 40 Code of Federal Regulations 59, Subpart C, for certain categories of consumer products under the Federal Clean Air Act, §183(e), as codified in 42 United States Code, §7511b(e). Through this provision, Congress required the EPA to conduct a study of VOC emissions from consumer and commercial products and to list for regulation, based on the study, categories of products that have the potential to contribute to ozone nonattainment. The final federal rule was based on the EPA's determination that VOC emissions from the use of consumer products can cause or contribute to ozone levels that violate the national ambient air quality standards for ozone.

The federal consumer products rule established a compliance date of December 10, 1998 for all products that are not registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code, §§135 - 136y) (FIFRA). Because of the time needed for registration of new or reformulated products under FIFRA, the compliance date for FIFRA-regulated products was one year later than that for non-FIFRA-regulated products (i.e., December 10, 1999).

The federal consumer products rule was modeled heavily on the Chapter 115 and CARB consumer products rules. Consequently, the emission standards for nearly all products categories in the federal rule are identical to the Chapter 115 consumer products rule. The five product categories for which the Chapter 115 consumer products rule is different from the federal rule are as follows:

Figure: 30 TAC Chapter 115--Preamble

Elimination of duplicative requirements will allow regulators and consumer product manufacturers to focus on one set of rules for compliance in Texas. Slight inconsistencies in language will be eliminated and manufacturers will only have to submit requests for innovative product exemptions to EPA in lieu of the current process which requires action by both the EPA and Texas. Fewer requirements with equivalent environmental protection are expected to be easier to enforce and easier to comply with, thus enhancing protection of the environment.

In the Dallas/Fort Worth 9% Rate-of-Progress SIP revision adopted on October 27, 1999, the commission took VOC emission reduction credit for the difference of windshield washer fluid standards between federal consumer products rule and Texas consumer products rule (35% vs 23.5% by weight) because windshield washer fluid represents a large percentage of the estimated emissions from consumer products, and emission reductions were needed to make up a shortfall in Dallas/Fort Worth in order to ensure the approval of the SIP. The VOC

credit is 0.2944 tons per day. The commission has not taken any credit for the difference between the state and federal consumer products rule for non-aerosol glass cleaners, nail polish removers, and nonaerosol antiperspirant/deodorant because these three categories represent a minor component of the estimated emissions from consumer products. Therefore, the commission is proposing to revise the Chapter 115 consumer products rule to include only the automotive windshield washer fluid category.

SECTION BY SECTION DISCUSSION

The amendment to §115.600, Definitions, deletes the definitions of terms which will no longer be necessary if the Chapter 115 consumer products rule is revised to include only automotive windshield washer fluid. These terms are: aerosol product; agricultural use; air freshener; all other forms; antiperspirant; American Society for Testing and Materials; bait station insecticide; bathroom and tile cleaner; carburetor-choke cleaner; charcoal lighter material; construction and panel adhesive; contact adhesive; cooking spray aerosols; crawling bug insecticide; deodorant; disinfectant; double-phase aerosol air freshener; dusting aid; engine degreaser; fabric protectant; flea and tick insecticide; flexible flooring material; floor polish or wax; flying bug insecticide; furniture maintenance product; gel; general purpose adhesive; general purpose cleaner; glass cleaner; hair-spray; hair mousse; hair styling gel; high volatility organic compound; household adhesive; household product; insect repellent; insecticide; insecticide fogger; institutional product; laundry prewash; laundry starch product; lawn and garden insecticide; liquid; medium volatility organic compound; nail polish; nail polish remover; nonaerosol product; nonresilient flooring; oven cleaner; pesticide; product category; product form; propellant; pump spray; restricted materials; single-phase aerosol air freshener; shaving cream; solid; spray buff product; wasp and hornet insecticide; wax; and wood floor wax.

The amendment to §115.600 also revises the definition of automotive windshield washer fluid by deleting an exemption for automotive windshield washer fluid in the washer fluid system of a motor vehicle before the initial sale because this situation is already addressed by existing §115.612(g). In addition, the amendment to §115.600 deletes the definition of executive director because this term is already defined in 30 TAC §3.2(16), concerning Definitions. The amendment to §115.600 also revises the definition of fragrance by replacing the term "Centigrade" with the more commonly used term "Celsius." In addition, the amendment to §115.600 revises the definition of percent by weight by correcting a reference to §115.617.

The amendment to §115.600 also replaces the term "subchapter" with the more specific term "division" and revises a reference to "Texas Natural Resource Conservation Commission" to "commission" for consistency with the commission's style guidelines. Finally, for the convenience of the reader the amendment to §115.600 also adds a reference to other sections where definitions of the terms used in the Chapter 115 consumer products rule may be found, and changes the title of §115.600 from "Definitions" to "Consumer Products Definitions."

The amendment to §115.610, Applicability, replaces the term "subchapter" with the more specific term "division" and replaces the term "consumer products" with "automotive windshield washer fluid" to reflect the scope of the proposed revisions to the consumer products rule.

The amendment to §115.612, Control Requirements, deletes 39 consumer product categories which have limits identical to those in the federal rule. The amendment to §115.612 also deletes three consumer product categories (non-aerosol glass cleaners; nail polish removers; and nonaerosol antiperspirant/deodorant) for which the limits in §115.612 are more stringent than the federal consumer products rule, but which represent a minor component of the estimated emissions from consumer products. The amendment to §115.612 further deletes a reference to §115.614, concerning Innovative Products, because this section is proposed for repeal as described further in this preamble.

In addition, the amendment to §115.612 deletes rule language which is specifically associated with one or more of the 42 product categories that this amendment will delete. Therefore, Tables III and IV, which specify the VOC content limits of the various consumer product categories, are proposed to be deleted from §115.612(a) and replaced by the automotive windshield washer fluid VOC content limit of 23.5% by weight. In addition, §115.612(b) is proposed to be revised to refer specifically to automotive windshield washer fluid rather than more broadly to consumer products. The commission also proposes that an example that illustrates use of a concentrated product in §115.612(b) be changed to a reference applicable to windshield washer fluid. Therefore, a reference to "hard-to-remove soils or stains" is proposed to be changed to a reference to extremely cold weather because an automotive windshield washer fluid containing 23.5% by weight of methanol (the most common VOC in windshield washer fluid) provides freeze protection to zero degrees Fahrenheit. In addition, §115.612(d) - (f) are proposed for deletion because these subsections will no longer be needed after the deletion of the consumer product categories in §115.612(a) other than automotive windshield washer fluid.

The amendment to §115.612 also deletes §115.612(c) because automotive windshield washer fluid manufactured in 1994 or earlier is no longer expected to be in the product distribution system over eight years after the final compliance date. Finally, existing §115.612(g) is proposed to be relettered as §115.612(c) due to the proposed deletion of existing §115.612(c) - (f).

The amendment to §115.613, Alternate Control Requirements, revises existing §115.613(a) by replacing the term "section" (which should have been "undesignated head") with the correct term "division" in response to rules revised in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289), deleting superfluous language, and updating a reference to §115.910 and reflecting a section title change.

The amendment to §115.613 also deletes §115.613(b) because this subsection was developed for product categories other than automotive windshield washer fluid and therefore will no longer be necessary after the deletion of the other 42 consumer product categories. For example, §115.613(b) refers to CARB variances, but no CARB variance for automotive windshield washer fluid would be valid in Texas because the CARB limit is less stringent than the Texas standard.

In addition, the amendment to §115.613 revises §115.613(c)(2) and deletes paragraph (7) in order to remove references to §§103.11, 103.31, and 103.33 to reflect the repeal of Chapter 103, concerning Procedural Rules. The amendment to §115.613 also revises §115.613(c)(3) by replacing the term "this rule" with a reference to §115.612(a) in order to make the intent of this paragraph more explicit. The amendment to §115.613 further reletters existing §115.613(c) as §115.613(b) due to the

deletion of existing §115.613(b) as described in the preceding paragraph.

Section 115.614, Innovative Products, is proposed for repeal because this section was developed for product categories other than automotive windshield washer fluid and therefore will no longer be necessary after the deletion of the other 42 consumer product categories.

The amendment to §115.615, Testing Requirements, replaces the term "subchapter" with the more specific term "division," replaces the term "consumer product" with "automotive windshield washer fluid" to reflect the scope of the proposed revisions to the consumer products rule, and deletes the testing requirements in §115.615(c) - (e) for product categories other than automotive windshield washer fluid, which will no longer be necessary after the deletion of the other 42 consumer product categories.

The amendment to §115.616, Recordkeeping and Reporting Requirements, replaces the term "subchapter" with the more specific term "division" and replaces the term "consumer product" with "automotive windshield washer fluid" to reflect the scope of the proposed revisions to the consumer products rule. The amendment to §115.616 also deletes §115.616(d) because this subsection was developed for the antiperspirant/deodorant product category and therefore will no longer be necessary after the deletion of this consumer product category.

The amendment to §115.617, Exemptions, replaces the term "consumer product" in §115.617(a) - (c) with "automotive windshield washer fluid" to reflect the scope of the proposed revisions to the consumer products rule and revise the term "undesignated head" in §115.617(b) to "division" in response to rules revised in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289).

The amendment to §115.617 also updates a reference in §115.617(d) from §115.612(a)(1) to §115.612(a), and replaces the term "Centigrade" in §115.617(d)(2) with the more commonly used term "Celsius." In addition, the amendment to §115.617 deletes exemptions in §115.617(d)(3) and (e) - (j) which will no longer be necessary after the deletion of the 42 consumer product categories other than automotive windshield washer fluid.

The amendment to §115.619, Counties and Compliance Schedules, revises the term "undesignated head" to "division" in response to rules revised in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289) and deletes references to dates which have become obsolete by the passing of the January 1, 1995 and January 1, 1996 compliance dates.

Finally, the division title is proposed to be changed from "Consumer Products" to "Automotive Windshield Washer Fluid" to more accurately reflect the content of the division.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Analyst with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments and repeal are in effect, there will be no fiscal implications for the commission or any other unit of state and local government due to implementation of the proposed amendments and repeal.

The purpose of the proposed rulemaking is to delete existing commission Chapter 115 consumer product rules which are duplicated by EPA's federal consumer products rule and to update

and correct a variety of references. This rulemaking is administrative in nature and will not add additional regulatory requirements that are not already required by federal or commission rules.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed amendments and repeal are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments and repeal will be potentially increased protection of the environment through increased compliance and enforcement of consumer product regulations. The elimination of duplicative requirements is expected to simplify enforcement and compliance provisions by allowing regulators and consumer product manufacturers to focus on one set of rules for compliance in Texas.

This rulemaking is administrative in nature and will not add additional regulatory requirements that are not already required by federal or state consumer products rules. No fiscal implications are anticipated for individuals and businesses due to implementation of the proposed amendments and repeal.

SMALL AND MICRO-BUSINESS ASSESSMENT

There will not be adverse fiscal implications for small and micro-businesses due to implementation of the proposed amendments and repeal, which are intended to delete existing commission Chapter 115 consumer products rules which is duplicated by EPA's federal consumer products rule and to update and correct a variety of references. This rulemaking is administrative in nature and will not add additional regulatory requirements that are not already required by federal or state consumer product rules. No fiscal implications are anticipated for small or micro-businesses due to implementation of the proposed amendments and repeal.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments and repeal do not adversely affect a local economy in a material way for the first five years that the proposed amendments and repeal are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed amendments and repeal to Chapter 115 are not major environmental rules because they are administrative in nature and are not specifically intended to protect the environment. The purpose of the proposed rulemaking is to eliminate existing commission Chapter 115 consumer products rules which are duplicated by EPA's consumer products rule and to update and correct a variety of references in the state rule. The proposed rulemaking would reduce the scope of the existing rules and would

not add any additional regulatory requirements that are not already required by federal or state consumer products rules.

In addition, a draft regulatory impact analysis is not required because the proposed amendments and repeal do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposal does not exceed a standard set by federal law, and the proposed technical requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this proposal does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed amendments and repeal are subject to Texas Government Code, Chapter 2007. The primary purpose of this rulemaking is to delete requirements which are duplicated by a federal consumer products rule and to update and correct a variety of references. The proposed rulemaking would reduce the scope of the existing rules. Promulgation and enforcement of these proposed amendments and repeal would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed amendments and repeal do not affect a landowner's rights in private real property because this proposal does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed amendments and repeal. Therefore, these amendments will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies.

The commission determined that the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality

in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, concerning Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 115 requirements at their sites affected by the revisions to Chapter 115.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on October 20, 2003, at 10:00 a.m. at the Texas Commission on Environmental Quality complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-039-115-A1. Comments must be received by 5:00 p.m., October 27, 2003. For further information, please contact Eddie Mack of the Strategic Assessment Division at (512) 239-1488 or Emily Barrett of the Policy and Regulations Division at (512) 239-3546.

DIVISION 1. AUTOMOTIVE WINDSHIELD WASHER FLUID

30 TAC §§115.600, 115.610, 115.612, 115.613, 115.615 - 115.617, 115.619

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health,

general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirement; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.600. *Consumer Products Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission [Texas Natural Resource Conservation Commission (Commission)], the terms used by the commission [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) [subchapter], 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) 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.]

[(1) [(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.]

[(2) [(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.

[(3) [(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 volatile organic compounds [VOCs]. 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.]

[(4) [(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.]

[(5) [(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.}]

(6) [(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 Celsius [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 VOC 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.}]

(7) [(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.}]

(8) [(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.]

(9) [(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 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.]

(10) [(60)] Percent by weight [Percent-by-weight] - The total weight of volatile organic compounds (VOCs) [VOC] except those VOCs exempted under §115.617 [§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:

Figure: 30 TAC §115.600(10)

[Figure: 30 TAC §§115.600(60)]

[(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.]

(11) [(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.)

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

(13) [(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.]

(14) [(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.

(15) [(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

earnauba 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.]~~

§115.610. Applicability.

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

§115.612. Control Requirements.

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

~~[(+) Except as provided in §115.613 and §115.617 [§§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 automotive windshield washer fluid [consumer product] which was manufactured after January 1, 1995 [(January 1, 1996 for Nail Polish Removers, and Glass Cleaners All Other Forms)] and contains volatile organic compounds [VOC] in excess of 23.5% by weight [the limits specified in Table III]. [Figure: 30 TAC §115.612(a)(1)]~~

~~[(2) Except as provided in §§115.613, 115.614, and 115.617 of this title, no person shall sell, supply, offer for sale, distribute, or manufacture for use in Texas any antiperspirant or deodorant which was manufactured after January 1, 1995, and contains high volatility organic compounds (HVOC) in excess of the limits specified in Table IV.] [Figure: 30 TAC §115.612(a)(2)]~~

(b) For automotive windshield washer fluid [consumer products] 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) [hard-to-remove soils or stains].

~~[(c) 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.]~~

~~[(d) 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 or antiperspirants.]~~

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

~~[(f) 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, 1996, that~~

emits greater than an average of 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 (SCAQMD) 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. Charcoal lighter materials certified by Executive Order of the California Air Resources Board (CARB) are adequate, but not necessary, to demonstrate compliance with the requirements of this subsection, unless the CARB certification is revoked.]

~~[(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 that was used in the SCAQMD Rule 1174 Testing Protocol for that product.]~~

~~[(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.]~~

~~[(g) The requirements of subsection (a) [(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, or at the time of subsequent sale of vehicles registered or licensed outside of Texas.~~

§115.613. Alternate Control Requirements.

(a) Alternate [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 division (relating to Automotive Windshield Washer Fluid) [section] may be approved by the executive director in accordance with §115.910 [§§115.910 - 115.916] of this title (relating to Availability of 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 alternate control requirements 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 an alternate control requirements 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 deviation 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 alternate control requirements.]~~

~~[(4) For any product for which alternate control requirements have 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 alternate control requirements 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 alternate control requirements granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard.}]

(b) [(e)] 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) [The alternate control requirements request shall be processed in accordance with §103.11 of this title (relating to Types of Hearings).] 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 [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.

(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 [VOC] 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 [VOC] standard.

{(7) Upon the application of any person, the executive director may review, and for good cause, modify or revoke an alternate control requirements order 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).}]

§115.615. *Testing Requirements.*

(a) Testing to determine compliance with the requirements of this division (relating to Automotive Windshield Washer Fluid) [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 division [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 automotive windshield washer fluid [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 automotive windshield washer fluid [a consumer product] 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 [consumer product] regulated under this division (relating to Automotive Windshield Washer Fluid) [subchapter], and manufactured after January 1, 1995, one of the following:

(1) - (3) (No change.)

(b) If a manufacturer uses a code indicating the date of manufacture for any automotive windshield washer fluid [consumer product] 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 [(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, 1995, each manufacturer subject to §115.612(a)(2) of this title shall submit to the executive director a written report. If a manufacturer introduces new products or makes formulation changes to existing products which alter information previously submitted pursuant to paragraph (5); (6); or (7) of this subsection, the manufacturer shall also submit by January 1 every year thereafter another report, detailing such information. 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. Each report shall include the following information:}

{(1) the brand name for each of the manufacturer's antiperspirant and deodorant products;}

{(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:}

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

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

{(6) the total high volatility organic compounds content in percent by weight.}

{(7) the total medium volatility organic compounds content in percent by weight.}

§115.617. Exemptions.

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

(b) The provisions of this division [undesignated head] shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in Texas an automotive windshield washer fluid [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 automotive windshield washer fluid [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 automotive windshield washer fluid [consumer product] is not distributed in Texas. This subsection does not apply to automotive windshield washer fluid [consumer products] that is [are] 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 [consumer product].

(d) The requirements of §115.612(a) [§115.612(a)(1)] 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. [Centigrade; or]

{(3) has a melting point higher than 20 degrees Centigrade 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) of this title shall not apply to any VOC that:}

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

{(2) has a vapor pressure of 2.0 millimeter Hg or less at 20 degrees Centigrade.}

{(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.}

{(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 continue to comply [be in compliance] with the requirements of this division (relating to Automotive Windshield Washer Fluid) as required by §115.930 of this title (relating to Compliance Dates) [undesignated head 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 legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2003.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: October 26, 2003

For further information, please call: (512) 239-6087



DIVISION 1. CONSUMER PRODUCTS

30 TAC §115.614

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the

protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.614. *Innovative Products.*

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

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Stephanie Bergeron

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Texas Commission on Environmental Quality

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The Texas General Land Office proposes an amendment to Title 31, Part 1, Chapter 3, Subchapter C of the Texas Administrative Code, §3.31(b)(16)(A) relating to fees for services and products. The amendment provides the Commissioner the discretion to waive the currently required in-kind contract maintenance fees. The Texas General Land Office will develop guidelines based on economies of scale to determine whether the fees shall be imposed.

The change will increase the flexibility of the Texas General Land Office to supply natural gas to its customers.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no significant negative fiscal impact to state or local government as a result of administering the section as amended.

Marshall Enquist, Attorney with the Energy Section, has determined that there will be a slight public benefit due to potential savings as a consequence of reduced service charges for sales of natural gas by the State.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no impact on local employment.

Comments may be submitted to Melinda Tracy, Legal Services, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78711 or by fax at (512) 463-6311, no later than 30 days after publication.

The amendment to this section is proposed under Texas Natural Resources Code §31.051, which authorizes the Texas General Land Office to make and enforce suitable rules consistent with the law.

The proposed amendment affects Sections 35.101 through 35.106 of the Utilities Code.

§3.31. *Fees.*

(a) General.

(1) Form of payment. Fees may be paid by cash, check, or other legal means acceptable to the General Land Office. Payment by means of electronic funds transfer may be required by Texas Government Code §404.095, §9.51 of this title (relating to Royalty and Reporting Obligations to the State), or by other chapters of this title.

(2) Time for payment. Payment is generally required in advance of issuance of permits, leases and other documents and/or delivery of services and/or materials by the General Land Office.

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the General Land Office shall have no further obligation to issue permits, leases and other documents and/or provide services and/or materials to the permittee, lessee, or applicant.

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

(1) Cost of land title documents.

(A) Preparation of each patent or deed of acquittance: \$50.

(B) Filing fee, original field notes: \$25.

(C) Filing fee, corrected field notes: no charge.

(D) Filing fee, other instruments required by law to be filed with the General Land Office or accepted for filing by the General Land Office: \$25 per instrument.

(E) recording fee per document, per county: the greater of \$10 or the actual amount charged by the county clerk.

(2) Certificates of facts:

(A) Narrative certificates of fact consisting of all data from the inception of chain of title to the date of perfection of title and mineral history in paragraph form, short form certificate of fact (consisting of original award date, patent, deeds of acquittance, classification, current mineral history) and supplemental or limited certificates of fact (consisting of specific information or start date for history of a specific tract land):

(i) mineral classified land:

(I) first file: \$100;

(II) each additional file: \$10;

(ii) non-mineral classified land:

(I) first file: \$75;

(II) each additional file: \$10.

(B) Spanish documents: \$50 per document, in addition to fees due under §1.3(b)(2)(A)(i) and (ii).

Figure: 30 TAC Chapter 115--Preamble

Product Category	VOC Content Limit (in percent by weight, except as noted)	
	State	Federal
Windshield washer fluid	23.5	35
Non-aerosol glass cleaners	6 ¹	8
Nail polish removers	75 ¹	85
Household adhesives - structural waterproof	---	15
Antiperspirant/deodorant - nonaerosol products	0 % by weight high volatility VOC ¹	---

¹ consistent with California Air Resources Board standards in effect as of January 1, 1996

Figure: 30 TAC §115.600(10)

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

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