

The Texas Commission on Environmental Quality (commission) adopts the 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) *without changes* to the proposed text as published in the September 26, 2003 issue of the *Texas Register* (28 TexReg 8287). The adopted amendments and repeal will not be republished.

The commission adopts 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 These amended and repealed sections and corresponding revisions to the SIP will be submitted to the United States Environmental Protection Agency (EPA).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 ADOPTED 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 Part 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, §§136 - 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

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

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 the 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 non-aerosol 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 are no longer necessary because 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; hairspray; 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; non-aerosol 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 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 non-aerosol 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 being repealed 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 deletes. Therefore, Tables III and IV, which specify the VOC content limits of the various consumer product categories, are 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 revised to refer specifically to automotive windshield washer fluid

rather than more broadly to consumer products. The commission also changed the example that illustrates use of a concentrated product in §115.612(b) to a reference applicable to windshield washer fluid. Therefore, a reference to “hard-to-remove soils or stains” is 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 deleted because these subsections are no longer needed due to 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 relettered as §115.612(c) due to the 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, 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 is no longer necessary

due to 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 repealed because this section was developed for product categories other than automotive windshield washer fluid and therefore is no longer necessary due to 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 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 are no longer necessary due to 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 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 is no longer necessary due to 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 revisions to the consumer products rule and revises the term "undesigned 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 are no longer necessary due to 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 "undesigned 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 that are obsolete by the passing of the January 1, 1995 and January 1, 1996 compliance dates.

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

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this adoption is not subject to §2001.0225 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 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 rulemaking is to eliminate existing commission Chapter 115 consumer products rules that are duplicated by EPA’s consumer products rule and to update and correct a variety of references in the state rule. The rulemaking reduces the scope of the existing rules and will not add any additional regulatory requirements that are not already required by federal or state consumer products rules.

In addition, a regulatory impact analysis is not required because the 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 adoption does not exceed a standard set by federal law, and the technical requirements are consistent with applicable federal standards. In addition, this adoption does not exceed an express requirement of state law and is not adopted 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 adoption does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the amendments and repeal are subject to Texas Government Code, Chapter 2007. The primary purpose of this rulemaking is to delete requirements that are duplicated by a federal consumer products rule and to update and correct a variety of references. The rulemaking reduces the scope of the existing rules. Promulgation and enforcement of these amendments and repeal are neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the amendments and repeal do not affect a landowner's rights in private real property because this adoption 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 amendments and repeal. Therefore, these amendments and repeal do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption 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 adopted rulemaking 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.

PUBLIC COMMENT

A public hearing was held in Austin, Texas, on October 20, 2003. One oral comment was submitted in support of the rule by the Cosmetic, Toiletry, and Fragrance Association (CTFA). The public comment period ended at 5:00 p.m. on October 27, 2003. Written comments were submitted by EPA and the Consumer Specialty Products Association (CSPA). CFTA and CSPA supported the proposed

amendments. EPA stated that since the purpose of the proposed rules is to remove duplicative requirements, it had no comments concerning the proposed rule revisions.

RESPONSE TO COMMENTS

CSPA stated that the amendments will enhance greater uniformity of applicable federal and state consumer product regulations. CSPA also commented that it is both reasonable and appropriate that the commission eliminate duplication of state and federal regulations. CTFA stated that since the EPA has adopted consumer product standards and since many other states have repealed their consumer product standards, it supported the repeal of the Texas standards. CTFA stated that this would be a more efficient use of agency and industry time.

The commission agrees with the comments. The 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 that requires action by both 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.

CSPA stated that the amendments will provide a benefit to small businesses because they will result in streamlined, understandable regulations that will help facilitate compliance.

The commission agrees with the comment. It is the commission's position that these amendments will help facilitate compliance for all affected businesses, both large and small.

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

STATUTORY AUTHORITY

The amendments are adopted 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 adopted 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.

§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:

Figure: 30 TAC §115.600(10)

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

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.

§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.

§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.

§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.

§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.

§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.

§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.

§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).

SUBCHAPTER G: CONSUMER RELATED SOURCES

DIVISION 1: CONSUMER PRODUCTS

§115.614

STATUTORY AUTHORITY

The repeal is adopted 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 adopted 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.

§115.614. Innovative Products.

