

CHAPTER 19-16.1

ANTIFREEZE REGULATION

19-16.1-01. Administration.

This chapter must be administered by the state department of health, hereinafter referred to as the department.

19-16.1-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Antifreeze" means any substance or preparation sold, distributed, or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid, to lower its freezing point, or to raise its boiling point.
2. "Distribute" means to hold with intent to sell to the consumer, offer for sale, to sell, barter, or otherwise supply.
3. "Label" means any display of written, printed, or graphic matter on, or attached to, a package or to the outside individual container or wrapper of the package.
4. "Package" means a sealed retail package, drum, or other container in which antifreeze is distributed to the consumer or a container holding no more than fifty-five gallons [208.20 liters] from which the antifreeze is directly installed in the cooling system by seller or reseller.
5. "Person" means any individual, partnership, association, firm, corporation, or limited liability company.

19-16.1-03. Registration - Penalty.

Before any antifreeze may be distributed in this state, the manufacturer or person whose name appears on the label shall make application to the department on forms provided by the latter for registration for each antifreeze which the manufacturer or person whose name appears on the label desires to distribute. All registrations expire on June thirtieth of each year. The application for registration must be accompanied by an inspection fee of forty dollars for each product and by a label or other printed matter describing the product. Upon approval by the department, a copy of the registration must be furnished to the applicant. The department shall remit inspection fees received by the department to the state treasurer for deposit in the state general fund. A penalty of fifty percent of the registration fee must be imposed if the certificate of registration is not applied for on or before July first of each year or within the same month such antifreeze is first manufactured or sold within this state.

19-16.1-04. Adulteration.

Antifreeze must be deemed to be adulterated:

1. If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system of an internal combustion engine, or if, when used in the cooling system of such an engine, it would make the operation of the engine dangerous to the user.
2. If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold or offered for sale.

19-16.1-05. Misbranding.

Antifreeze must be deemed to be misbranded:

1. If it does not bear a label which specifically identifies the product, states the name and place of business of the registrant, states the net quantity of contents in terms of liquid measure separately and accurately in a uniform location under the principal display panel, and contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze;

2. If the product is to be diluted with another substance for use and its labeling does not contain a statement or chart showing appropriate amounts of each substance to be used to provide protection from freezing at various degrees of temperature;
3. If the labeling contains a corrosion protection claim and does not include a statement of the amount to be used to provide such protection;
4. If its labeling contains any claim that it has been approved or recommended by the department; or
5. If its labeling is false, deceptive, misleading, or is illegal under any law of the state or under any applicable federal law.

19-16.1-06. Rules and regulations.

The department may adopt such reasonable rules, regulations, and standards pursuant to chapter 28-32 as may be necessary in order to secure the efficient administration of this chapter.

19-16.1-07. Inspection, sampling, and analysis.

The department is hereby authorized at reasonable hours to enter, inspect, and examine all places and property where antifreeze is stored or distributed for the purpose of taking reasonable samples of antifreeze for analysis together with specimens of labeling. It is the duty of the department to examine promptly all samples received in connection with the administration and enforcement of this law and to report the results to the owner and the registrant of the antifreeze.

19-16.1-08. Prohibited acts.

It is unlawful to:

1. Distribute any antifreeze which has not been registered in accordance with this chapter or whose label is different from that accepted for registration.
2. Distribute any antifreeze which is adulterated or misbranded.
3. Refuse to permit entry or inspection or to permit the acquisition of a sample of any antifreeze as authorized by this chapter.
4. Dispose of any antifreeze under "withdrawal from distribution" order in accordance with this chapter except as provided in this chapter.
5. Distribute any antifreeze unless it is in the registrant's or manufacturer's package, except that a distributor may obtain written authorization from the department annually to distribute antifreeze in bulk using a container supplied by the customer, provided the distributor attaches to the container a label bearing all of the information required by this chapter.
6. Use the term "ethylene glycol" on the label of a product which contains other glycols unless it is qualified by the word "base", "type", or wording of similar import and unless the product contains a minimum ethylene glycol content of seventy-five percent by regulation weight and a minimum total glycol content of ninety-three percent by weight. It must also have a corrected specific gravity to give reliable freezing point readings on a commercial ethylene glycol type hydrometer and a freezing point, when mixed with an equal volume of water, of thirty-two degrees Fahrenheit [53.33 degrees Celsius] below zero or lower.

19-16.1-09. Enforcement.

When the department finds any antifreeze being distributed in violation of this chapter or of any of the laws or any of the rules and prescribed regulations duly promulgated and adopted under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the department or a court of competent jurisdiction. Copies of such orders must also be sent by registered or certified mail to the registrant or to the person whose name and address appears on the label of the antifreeze. The department shall release for distribution the lot of antifreeze so withdrawn upon compliance with applicable rules and

regulations, or for return to the registrant or the person whose name and address appears on the label for reprocessing or relabeling as may be required. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation. Any lot of antifreeze not in compliance with the law is subject to seizure upon complaint of the department in the district court of the county in which it is located or in the district court of Burleigh County.

19-16.1-10. Submission of formula.

The department may, for the purpose of registration, require the applicant to furnish a statement of the formula of such antifreeze, unless the applicant can furnish other satisfactory evidence that such antifreeze is not adulterated or misbranded. The statement need not include inhibitor or other ingredients which total less than five percent by weight of the antifreeze. All statements of formula and other trade secrets furnished under this section are privileged and confidential and may not be made public or open to the inspection of any persons, firms, associations, corporations, or limited liability companies other than the department. No such statement is subject to subpoena nor may the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal without the consent of the applicant furnishing such statement to the department.

19-16.1-11. Penalty.

Any person who violates or fails to comply with any of the provisions of this chapter, for which another penalty has not been specifically provided, is guilty of a class B misdemeanor.

19-16.1-12. Prosecutions - State's attorney.

It is the duty of each state's attorney to whom the department reports any violation of this chapter to cause appropriate proceedings to be instituted in the proper courts without delay in the manner required by law. However, nothing in this chapter may be construed as requiring the department to report minor violations for the institution of proceedings under this chapter whenever it believes that the public interest will be adequately served by suitable written notice or warning.

19-16.1-13. Injunction proceedings.

In addition to other remedies herein provided, the department is authorized to apply to the district court of Burleigh County for a temporary or permanent injunction restraining any person from violating any provision of this chapter irrespective of whether or not there exists an adequate remedy at law and appropriate costs must be taxed by the court for any and all expenses to the department for the injunctive proceedings.

19-16.1-14. Reports by department.

Except as otherwise provided herein, the department may publish reports of any analyses, inspections, or research done under this chapter for the information of the public.