

Texas Department of Agriculture Pesticide Laws and Regulations



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Texas Pesticide and Right-to-Know Laws and Regulations

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Chapter 76. Pesticide and Herbicide Regulation

Subchapter A. General Provisions

Sec. 76.001. Definitions. In this chapter:

- (1) **“Active ingredient”** means:
 - (A) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;
 - (B) in the case of a plant regulator, an ingredient that through physiological action accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or the product of an ornamental or crop plant;
 - (C) in the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or
 - (D) in the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue.
- (2) **“Animal”** means a vertebrate or invertebrate species, including man, other mammals, birds, fish, and shellfish.
- (3) **“Antidote”** means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid.
- (4) **“Application of a herbicide”** means the spreading of a herbicide on real property having a continuous boundary line.
- (5) **“Defoliant”** means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
- (6) **“Department”** means the Department of Agriculture.
- (7) **“Desiccant”** means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- (8) **“Device”** means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than man or a bacteria, virus, or other microorganism on or in living man or other living animals. The term does not include equipment sold separately from a pesticide.
- (9) **“Distribute”** means offer for sale, hold for sale, sell, barter, or supply.
- (10) **“Environment”** includes water, air, land, plants, man, and other animals living in or on water, air, or land, and the interrelationships that exist among them.
- (11) **“Equipment”** means any type of ground, water, or aerial equipment or contrivance employing motorized, mechanical, or pressurized power and used to apply a pesticide to land or to anything that may be inhabiting or growing or stored on or in the land. The term does not include a pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance for which the person applying the pesticide is the source of power or energy used in making the pesticide application.
- (12) **“FIFRA”** means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.).
- (13) **“Fungus”** means a non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, or bacteria, but not including a non-chlorophyll-bearing thallophyte on or in living man or other living animals or on or in a processed food, beverage, or pharmaceutical.
- (14) **“Inert ingredient”** means an ingredient that is not an active ingredient.
- (15) **“Insect”** means any of the numerous small invertebrate animals generally having a segmented body and for the most part belonging to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. The term includes allied classes of arthropods, the members of

which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

- (16) **"Label"** means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.
- (17) **"Labeling"** means a label or any other written, printed, or graphic matter prepared by a registrant:
 - (A) accompanying the pesticide or device at any time; or
 - (B) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, non-misleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides.
- (18) **"Land"** means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any used for transportation.
- (19) **"License use category"** means a classification of pesticide use based on the subject, method, or place of pesticide application.
- (20) **"Nematode"** means an invertebrate animal of the phylum Nematelminthes and class Nematoda (an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle) inhabiting soil, water, plants, or plant parts.
- (21) **"Pesticide"** means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- (22) **"Plant regulator"** means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation, or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant, but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.
- (23) **"Registrant"** means a person who has registered a pesticide under this chapter.
- (24) **"Regulatory agency"** means a state agency with responsibility for certifying applicators under Subchapter E of this chapter.
- (25) **"Restricted-use pesticide"** means a pesticide classified as a restricted-use pesticide by the Environmental Protection Agency.
- (26) **"Thallophyte"** means a non-chlorophyll-bearing plant of a lower order than mosses and liverworts.
- (27) **"Weed"** means any plant that grows where not wanted.
- (28) **"Worker protection standard"** means the federal worker protection standard as found in the Code of Federal Regulations, 40 C.F.R. Parts 156 and 170.

Acts 1981, 67th Leg., p. 1188, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.002. Pests.

The department shall determine what organisms constitute pests for purposes of this chapter and may include in the list of pests:

- (1) any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life; or
- (2) any virus, bacteria, or other microorganism, other than a virus, bacteria, or other microorganism on or in living man or other living animals.

Acts 1981, 67th Leg., p. 1190, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.003. State-Limited-Use Pesticides.

- (a) After notice and public hearing, the department may adopt lists of state-limited-use pesticides for the entire state or for a designated area within the state.
- (b) A pesticide may be included on a list of state-limited-use pesticides if the department determines that, when used as directed or in accordance with widespread and commonly recognized practice, the pesticide requires additional restrictions to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide. However, the department shall not place a pesticide on the state-limited-use list solely on the basis of actual damage or risk of damage to water quality without first obtaining approval from the Texas Natural Resource Conservation Commission based on the impact of the pesticide's use on water quality.
- (c) The department shall formally request an opinion regarding impact on water quality from the Texas Natural Resource Conservation Commission during department consideration of any amendments to the current list of state-limited-use pesticides.
- (d) At the direction of the Texas Natural Resource Conservation Commission in conjunction with its responsibilities pursuant to Chapter 26, Water Code, the department shall consider any formal request to add any pesticide to the state-limited-use list under Subsection (b), and the department shall issue regulations regarding the time, place, and conditions of such pesticide's use.
- (e) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only:
 - (1) with permission of the department;
 - (2) under direct supervision of the department in certain areas under certain conditions; or
 - (3) in specified quantities and concentrations.
- (f) The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records.

Acts 1981, 67th Leg., p. 1190, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 80, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.03, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.004. Department Rules.

- (a) The department may adopt rules for carrying out the provisions of this chapter, including rules providing for:
 - (1) the collection, examination, and reporting of records, devices, and samples of pesticides;
 - (2) the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers;
 - (3) labeling requirements for pesticides and devices required to be registered under this chapter; and
 - (4) compliance with federal pesticide rules and regulations.
- (b) Any rules adopted by the department for the purpose of protection or enhancement of water quality shall not be inconsistent with nor less stringent than rules adopted for the protection or enhancement of water quality by the Texas Natural Resource Conservation Commission pursuant to recommendations of the Texas Groundwater Protection Committee.

Acts 1981, 67th Leg., p. 1190, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 81, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.04, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 9.20, eff. September 1, 2009.

Sec. 76.006. Pesticide Examination and Testing.

- (a) The department may contract with a state college or university, state agency, or commercial laboratory for examination of a pesticide. The department shall let contracts with commercial laboratories under this subsection on the basis of competitive bidding.
- (b) The department may make or provide for sample tests of a pesticide on request and may charge and collect a fee for the tests in an amount necessary to cover expenses incurred in making or providing for the tests.

Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.007. Interagency Cooperation.

- (a) The department shall be the lead agency for pesticide regulation in Texas. In cooperation with the U.S. Environmental Protection Agency or any federal agency responsible for implementation of federal pesticide law, the department shall:
 - (1) register pesticides for use in Texas;
 - (2) adopt lists of state-limited-use pesticides;
 - (3) provide for training, certification, and licensure of all classes of pesticide applicators;
 - (4) enforce pesticide laws and regulations governing the safe handling, use, storage, distribution, and disposal of pesticide products; and
 - (5) adopt rules to carry out the provisions of this chapter.
- (b) The Texas Natural Resource Conservation Commission shall have principal authority to regulate and control water pollution. If the United States Environmental Protection Agency adopts a final rule requiring states to implement a state management plan for pesticides in groundwater, the department shall cooperate with the Texas Groundwater Protection Committee in the committee's development and implementation of federally mandated state management plans for pesticides in groundwater in accordance with Section 26.407, Water Code.
- (c) The department shall seek advice from the Texas Natural Resource Conservation Commission, the Parks and Wildlife Department, the Texas Department of Health, and the Texas Agricultural Extension Service in reviewing applications for special local need or emergency pesticide registrations. The department shall act expeditiously to review any application for special local need or emergency pesticide registrations.
- (d) The department shall give written notice to the Texas Natural Resource Conservation Commission whenever it has probable cause to believe that serious contamination of water has occurred as a result of use, misuse, manufacture, storage, or disposal of pesticides so that the Texas Natural Resource Conservation Commission may proceed with an investigation of a possible violation of the Water Code.
 - (1) If the Texas Natural Resource Conservation Commission determines that a violation of the Water Code has occurred, the commission shall seek the remedies provided by the Water Code.
 - (2) If the department determines that a violation of the Agriculture Code has occurred regarding the use, manufacture, storage, or disposal of pesticides, the department shall seek the remedies provided by this code.

- (3) The foregoing remedies shall not be mutually exclusive.
- (e) The Texas Natural Resource Conservation Commission shall give written notice to the department whenever it has probable cause to believe that serious contamination of water has occurred as a result of the use, misuse, storage, disposal, or manufacture of pesticides so that the department may proceed with an investigation to determine if a violation of the Agriculture Code has occurred.
 - (1) If the department determines that a violation of the Agriculture Code has occurred, the department shall seek the remedies provided by this code.
 - (2) If the Texas Natural Resource Conservation Commission determines that a violation of the Water Code has occurred, the Texas Natural Resource Conservation Commission shall seek the remedies provided by the Water Code.
 - (3) The foregoing remedies shall not be mutually exclusive.
- (f) The department shall consult with the Texas Department of Health before denying or canceling a pesticide registration because of a suspected public health threat. The department shall also coordinate enforcement efforts with the department of health when a serious public health threat is suspected.
- (g) A regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agency, an agency of this state, a subdivision of this state, or an agency of another state for the purpose of obtaining assistance in the implementation of this chapter.

Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 79, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.05, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.008. Exemption.

Sections 76.007, 76.104-76.106, 76.108-76.117, 76.151(b), 76.151(c), 76.154(b), 76.155, 76.181, 76.182, 76.184, and 76.201(d)(1) do not apply to a person who is regulated by Chapter 1951, Occupations Code. Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.751, eff. Sept. 1, 2003.

Sec. 76.009. Pesticide Disposal Fund.

- (a) The pesticide disposal fund is a fund in the state treasury outside the general revenue fund. The fund consists of:
 - (1) money deposited to the credit of the fund under Section 76.044; and
 - (2) interest earned on the investment of money in the fund.
- (b) The department shall administer the fund. Money in the fund may be appropriated only for the purposes of the pesticide waste and pesticide container collection activities performed under Section 76.132.

Added by Acts 2019, 86th Leg., R.S., Ch. 1025 (H.B. 191), Sec. 1, eff. September 1, 2019.

Subchapter B. Labeling

Sec. 76.021. Labeling Information.

- (a) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:
 - (1) the label information required by FIFRA, if the pesticide is subject to registration under that law; or

- (2) the following information, if the pesticide is not subject to registration under FIFRA:
- (A) the name, brand, or trademark under which the pesticide is distributed;
 - (B) the name and percentage of each active ingredient and the total percentage of inert ingredients;
 - (C) directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;
 - (D) if the pesticide contains any form of arsenic, the percentage of total water-soluble arsenic, calculated as elementary arsenic;
 - (E) the name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;
 - (F) numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and
 - (G) a clear display of appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.
- (b) The label bearing the ingredient statement under Subsection (a)(2)(B) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.022. Conspicuous Lettering.

Any word, statement, or information required by this chapter to appear on a label or in labeling of a pesticide or device registered by the department shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary conditions of use.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.023. Misbranded Pesticide or Device.

- (a) A pesticide or device is misbranded if:
- (1) it is subject to registration under FIFRA and it does not fully comply with the labeling requirements of the United States Environmental Protection Agency; or
 - (2) it is not subject to registration under FIFRA and:
 - (A) its labeling bears a statement, design, or graphic representation relating to the pesticide or device, or the ingredients of either, that is false or misleading in any particular;
 - (B) it is an imitation of or is distributed under the name of another pesticide or device; or
 - (C) it is not conspicuously labeled in accordance with Section 76.022 of this code.
- (b) A pesticide is misbranded if:
- (1) its labeling bears any reference to registration under this chapter, unless the reference is required by a rule adopted under this chapter;
 - (2) it does not bear a label as required by Section 76.021 of this code; or
 - (3) its label does not bear information as required by Section 76.021 of this code or a rule adopted under this chapter.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Subchapter C. Registration

Sec. 76.041. Registration Required.

- (a) Except as provided by Subsection (b), (c), (d), or (e) of this section, before a pesticide is distributed in this state or is delivered for transportation or is transported in intrastate commerce or between points within this state through a point outside the state, it must be registered with the department. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.
- (b) Registration is not required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used solely at the second plant or warehouse as a constituent of a pesticide that is registered under this chapter.
- (c) Registration is not required for a pesticide that is not for use in this state and is being manufactured, transported, or distributed for use only outside of this state.
- (d) Registration is not required for a chemical compound being used only to develop plot data as to the possible pesticidal action of the chemical.
- (e) Unless otherwise required by department rule, registration is not required for a pesticide that is exempt from registration with the United States Environmental Protection Agency under federal law.
- (f) The Texas Feed and Fertilizer Control Service may not register under Chapter 63 a fertilizer that contains a pesticide that must be registered with the department under this chapter unless the constituent pesticide is first registered with the department. The Texas Feed and Fertilizer Control Service shall consult with the department about the current registration status of a pesticide before registering any fertilizer mix containing that pesticide under Chapter 63. The department shall notify the Texas Feed and Fertilizer Control Service of any changes to a pesticide registration.
- (g) Except as provided by Subsection (g-1), a pesticide that has been registered with the department must continue to be registered until the earlier of:
 - (1) the second anniversary of the date the registrant stops distributing the pesticide in this state; or
 - (2) the date no pesticide remains in the channels of trade in this state.
- (g-1) A registrant that initiates a recall of a pesticide from distribution in this state before the pesticide's registration expires is not required to continue to register the pesticide after the expiration date.
- (h) If the department issues a stop use, stop distribution, or removal order because the pesticide is not registered with the department, the registrant shall take any necessary action to remedy the situation, including reimbursing a person who is subject to the order for the person's costs in complying with the order.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 6.02, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2023, 88th Leg., R.S., Ch. 130 (H.B. 1761), Sec. 1, eff. September 1, 2023.

Sec. 76.042. Content of Registration Application.

- (a) The application for registration of a pesticide shall include:
 - (1) the name and address of the applicant and the name and address of the person whose name will appear on the pesticide label, if not the applicant's;
 - (2) the name of the pesticide;
 - (3) a complete copy of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use and, if the pesticide is required to be registered with the United States Environmental Protection Agency, a copy of the Environmental

- Protection Agency stamped accepted labeling and any applicable comment pages;
- (4) the use classification, whether for restricted or general use, as provided by the federal Insecticide, Fungicide, and Rodenticide Act, as amended, or by a rule adopted under that Act;
 - (5) the use classification proposed by the applicant, if the pesticide is not required by federal law to be registered under a use classification; and
 - (6) other information required by the department for determining the eligibility for registration.
- (b) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.
 - (c) The department may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide that is not registered under federal law or for which federal or state restrictions on use are being considered.
 - (d) A person located outside this state, as a condition to registration of a pesticide, shall file with the department a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the person may designate in writing the secretary of state as the recipient of service of process for the person in this state.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.043. Expiration and Renewal.

- (a) Registration of a pesticide expires on the second anniversary of the date of its approval or renewal except that the department shall by rule adopt a system under which registrations expire on various dates during the year.
- (b) A person who applies for renewal of registration shall include in the renewal application only information that is different from the information furnished at the time of the most recent registration or renewal.
- (c) A registration in effect on its expiration date for which a renewal application has been filed and renewal fee has been paid continues in effect until the department notifies the applicant that the registration has been renewed or denied renewal.

Acts 1981, 67th Leg., p. 1193, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 6.03, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.044. Fees.

- (a) The department shall charge a fee, as provided by department rule, for each pesticide to be registered. The fee must be submitted with an application for registration or renewal of registration.
- (b) A person who fails to apply for renewal of registration on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code for each brand to be renewed.
- (c) Of the money received by the department under this section, the department shall annually deposit to the credit of the pesticide disposal fund under Section 76.009 an amount to cover the cost of administering the pesticide waste and pesticide container collection activities performed under Section 76.132, not to exceed \$400,000. The department may not increase the amount of a fee under this section for purposes of this subsection or Section 76.132.

Acts 1981, 67th Leg., p. 1193, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4284, ch. 682, Sec. 5, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 230, Sec. 83, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.08, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.35, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Amended by: Acts 2019, 86th Leg., R.S., Ch. 1025 (H.B. 191), Sec. 2, eff. September 1, 2019.

Sec. 76.045. Registration for Special Local Need.

- (a) The department may register a pesticide for additional uses and methods of application not covered by federal registration but not inconsistent with federal law, for the purpose of meeting a special local need.
- (b) Before approving a registration under this section, the department shall determine that the applicant meets the other requirements of this subchapter.

Acts 1981, 67th Leg., p. 1193, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Agriculture Code Sec. 76.046 and amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.046. Denial or Cancellation of Registration.

- (a) If the department has reason to believe that any use of a registered pesticide is in violation of a provision of this chapter or is dangerous or harmful, the department shall determine whether a hearing shall be held under Section 12.032 on denial or cancellation of registration.
- (b) The department shall issue written notice of a hearing under this section to the registrant of the pesticide. The notice must contain a statement of the time and place of the hearing. The hearing shall be held after the 10th day following the day on which the notice is issued.
- (c) After opportunity at the hearing for presentation of evidence by interested parties, the department may deny or cancel the registration of the pesticide if the department finds that:
 - (1) use of the pesticide has demonstrated uncontrollable adverse environmental effects;
 - (2) use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;
 - (3) even if properly used, the pesticide is detrimental to vegetation, except weeds, to domestic animals, or to public health and safety;
 - (4) a false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature; or
 - (5) the registrant has not complied or the pesticide does not comply with a requirement of this chapter or a rule adopted under this chapter.

Acts 1981, 67th Leg., p. 1194, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 3.13, eff. Sept. 1, 1995. Renumbered from Agriculture Code Sec. 76.047 by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.047. Experimental Use Permit.

- (a) The department may issue an experimental use permit if the department determines that the applicant needs the permit in order to accumulate data necessary to register a pesticide under this chapter.
- (b) A person may file an application for an experimental use permit before or after applying for registration.
- (c) Use of a pesticide under an experimental use permit is under the supervision of the department and is subject to the terms and conditions, and valid for a period of time, prescribed by the department in the permit.
- (d) The department may charge a fee for issuing a permit under this section in an amount equal to the amount charged for registration under Section 76.044(a).
- (e) The department may revoke an experimental use permit at any time if the department finds that:
 - (1) the terms or conditions of the permit are being violated; or
 - (2) the terms and conditions of the permit are inadequate to avoid any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide.

Acts 1981, 67th Leg., p. 1194, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Agriculture Code Sec. 76.048 and amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Subchapter D. Licensing of Dealers

Sec. 76.071. License Required.

- (a) A person may not distribute in this state a restricted-use or state-limited-use pesticide or regulated herbicide without a valid current pesticide dealer license issued by the department.
- (b) Except as otherwise provided by this section, a pesticide dealer must obtain a license for each location in the state that is used for distribution. If the person does not have a place of business in this state, the person may obtain one license for all out-of-state locations, but shall file as a condition to licensing a designation of an agent for service of process as provided by Section 76.042(d) of this code.
- (c) A person must apply for a pesticide dealer license on forms prescribed by the department.
- (d) A pesticide dealer may not distribute a restricted-use or state-limited-use pesticide or a regulated herbicide except to:
 - (1) a person licensed as a commercial applicator, noncommercial applicator, or private applicator;
 - (2) an individual working under the direct supervision of a licensed applicator;
 - (3) a certified private applicator;
 - (4) a licensed pesticide dealer; or
 - (5) a person who is licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners.

Acts 1981, 67th Leg., p. 1194, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.072. Expiration.

A pesticide dealer license expires on the second anniversary of the date of its granting or renewal unless the department by rule adopts a system under which licenses expire on specified dates during a year.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.073. Fees.

- (a) An application for a pesticide dealer license must be accompanied by a registration fee, as fixed by the department.
- (b) A person who fails to apply for renewal of a pesticide dealer license on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 84, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.36, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.074. Display of Dealer License.

- (a) Each dealer shall prominently display the pesticide dealer license in the dealer's place of business.
- (b) Failure to display a license as required by this section is a ground for revocation of the license.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.075. Records.

- (a) A person required to obtain a dealer's license by Section 76.071 shall record each distribution of a restricted-use or state-limited-use pesticide or regulated herbicide and shall maintain a copy of the record for at least two years after the date of the distribution.
- (b) The department shall adopt rules that prescribe the information to be stated in the records required by this section.
- (c) The department may require that a copy of the records required by this section be submitted periodically to the department.
- (d) The department may revoke a dealer's license if the licensee fails to submit a copy of a record as required under Subsection (c) or makes false or fraudulent records, invoices, or reports.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.076. Denial, Revocation, Modification, or Suspension of License.

- (a) The department may deny an application for a dealer's license if the applicant fails to comply with this chapter. The department may revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.
- (b) If a license suspension is probated, the department may require the person to:
 - (1) report regularly to the department on matters that are the basis of the probation; or
 - (2) limit business to the areas prescribed by the department.
- (c) If the department proposes to deny a person's application for a pesticide dealer license or to revoke, modify, or suspend a person's license, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 85, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.077. Exceptions.

- (a) This subchapter does not apply to a manufacturer or formulator of a pesticide who does not sell directly to the user.
- (b) This subchapter does not apply to a licensed pesticide applicator who:
 - (1) distributes restricted-use or state-limited-use pesticides or regulated herbicides only as an integral part of the pesticide application business; and
 - (2) dispenses the pesticides only through equipment used in the pesticide application business.
- (c) This subchapter does not apply to a federal, state, county, or municipal agency that provides pesticides only for its own programs.

Acts 1981, 67th Leg., p. 1196, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Subchapter E. Use and Application

Sec. 76.101. Coordination.

- (a) The department is the lead agency in the regulation of pesticide use and application and is responsible for coordinating activities of state agencies, except as provided by Section 76.007(b) of this code and by Chapter 26 of the Water Code. The department shall submit a state plan for the licensing of pesticide applicators to the administrator of the Environmental Protection Agency.
- (b) The department shall coordinate, plan, and approve training programs and shall use the public and private resources of this state, including state universities, colleges, junior colleges, community colleges, the Texas Agricultural Extension Service, and the Texas Agricultural Experiment Station. The department and the Texas Agricultural Extension Service shall adopt a memorandum of understanding to jointly coordinate, plan, and approve the training programs for private applicators.
- (c) The department shall make plans under this section on the basis of convenience to applicants, thoroughness of preparation and testing, and maximum economy in expenditures for this purpose. The department shall make full use of grants-in-aid and cooperative agreements in administering this subchapter.
- (d)
 - (1) Except as otherwise provided by this subsection, no city, town, county, or other political subdivision of this state shall adopt any ordinance, rule, or regulation regarding pesticide sale or use.
 - (2) Nothing in this subsection shall be construed to limit the authority of a city, town, or county to:
 - (A) encourage locally approved and provided educational material concerning a pesticide;
 - (B) zone for the sale or storage of such products;
 - (C) adopt fire or building regulations as preventative measures to protect the public and emergency services personnel from an accident or emergency involving such products, including regulations governing the storage of such products or governing fumigation and thermal insecticidal fogging operations;
 - (D) provide or designate sites for the disposal of such products;
 - (E) route hazardous materials; or
 - (F) regulate discharge to sanitary sewer systems.
 - (3) This subsection shall not prevent a city, town, county, or any political subdivision from complying with any federal or state law or regulation. This subsection shall not prevent a city, town, county, or any political subdivision from attaining or maintaining compliance with federal or state environmental standards including Texas water quality standards. A city, town, county, or other political subdivision may take any action otherwise prohibited by this subsection in order to comply with any federal requirements, to avoid any federal or state penalties or fines, or to attain or maintain federal or state environmental standards including Texas water quality standards.

Acts 1981, 67th Leg., p. 1196, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 86, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 96, Sec. 1, eff. May 7, 1993; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.102. Agencies Responsible for Licensing Pesticide Applicators.

The department shall license pesticide applicators involved in the following license use categories:

- (1) agricultural pest control, including animal pest control;
- (2) forest pest control;
- (3) ornamental and turf pest control, except as provided by Chapter 1951, Occupations Code;

- (4) seed treatments;
- (5) right-of-way pest control;
- (6) regulatory pest control;
- (7) aquatic pest control;
- (8) demonstration pest control;
- (9) health-related pest control; and
- (10) other license use categories as necessary to comply with federal requirements. The department may not adopt license use categories that are designated by statute for regulation by another agency.

Acts 1981, 67th Leg., p. 1196, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2589, ch. 693, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 87, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.752, eff. Sept. 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1278, Sec. 1, eff. September 1, 2009.

Sec. 76.103. Program Contingent On Federal Funds.

- (a) The licensing of commercial applicators, noncommercial applicators, and private applicators is contingent on the availability of federal funds to pay part of the costs of administering and enforcing the program.
- (b) If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the department shall certify that fact and discontinue the licensing of commercial applicators, noncommercial applicators, and private applicators. The department shall publish notice of the discontinuance of the program in the Texas Register.
- (c) If sufficient funds become available after discontinuance, the department shall certify the availability of sufficient funds to pay all costs of administration and enforcement of the program and shall resume the licensing of commercial applicators, noncommercial applicators, and private applicators. The department shall publish notice of resumption of the program in the Texas Register.
- (d) The department shall determine the effective date of discontinuance or resumption of the program, but the date may not be before the date of publication of notice in the Texas Register.
- (e) During any period in which the program has been discontinued, a person is not required to have a license provided by this subchapter in order to use pesticides, but a person may be prosecuted for acts committed or omitted when the program was in effect.

Acts 1981, 67th Leg., p. 1197, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2589, ch. 693, Sec. 2, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 88, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.104. Agency Rules for Application of a Pesticide.

- (a) The head of each regulatory agency may, after notice and public hearing, adopt rules to carry out the provisions of this subchapter for which the agency is responsible.
- (b) Rules adopted under this section may:
 - (1) prescribe methods to be used in the application of a restricted-use or state-limited-use pesticide or regulated herbicide;
 - (2) relate to the time, place, manner, method, amount, or concentration of pesticide application or to the materials used in pesticide application; and
 - (3) restrict or prohibit use of a restricted-use or state-limited-use pesticide or regulated herbicide in designated areas during specific periods of time.

- (c) A regulatory agency may adopt a rule under this section only after consideration of precautions or restrictions necessary to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.
- (d) The department shall adopt worker protection standards for pesticides if there is no federal worker protection standard. The department may adopt other rules for the protection of the health, safety, and welfare of farm workers and pesticide handlers.

Acts 1981, 67th Leg., p. 1197, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.105. License Required.

- (a) Except as provided by Section 76.003(e), a person may not purchase or use a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is:
 - (1) licensed as a commercial applicator, noncommercial applicator, or private applicator and authorized by the license to purchase or use the restricted-use or state-limited-use pesticide or regulated herbicide in the license use categories covering the proposed pesticide use;
 - (2) an individual acting under the direct supervision of a licensed applicator, except as provided by Subsection (b) of this section and by Sections 76.003(e) and 76.116(f); or
 - (3) a certified private applicator as defined in Section 76.112(j) of this code.
- (b) An individual is under the direct supervision of a licensed applicator if the individual is acting under the instructions and control of a licensed applicator who is responsible for the actions of the individual and who is available if and when needed. A licensed applicator may not supervise an applicator whose license or certificate is under suspension or revocation. The licensed applicator is not required to be physically present at the time and place of the pesticide application unless the label of the applied pesticide states that the presence of the licensed applicator is required.
- (c) A licensed applicator is responsible for assuring that the person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of pesticides. A licensed applicator satisfies the requirements of this subsection if the person working under the licensee's direct supervision has been trained as a handler under the federal worker protection standard.
- (d) A person who is authorized under this chapter to use restricted-use or state-limited-use pesticides or regulated herbicides shall comply with all applicable federal and state rules, regulations, and court orders regarding the use of restricted-use or state-limited-use pesticides or regulated herbicides.
- (e) Except as provided by Section 76.003(e), a person may not purchase a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is a licensed or a certified applicator or authorized by a licensed or certified applicator to purchase or take delivery for the applicator.
- (f) The other provisions of this section notwithstanding, the department may adopt rules or establish programs that the U.S. Environmental Protection Agency or another federal agency requires as a condition for receiving:
 - (1) approval to authorize use of certain restricted-use or state-limited-use pesticides or regulated herbicides;
 - (2) federal funding for licensing or certification of pesticide applicators;
 - (3) federal funding for pesticide law enforcement efforts; or
 - (4) other federal funding related to pesticide risk reduction.
- (g) The other provisions of this chapter notwithstanding, if the U.S. Environmental Protection Agency or another federal agency imposes on the state standards for certification of commercial, noncommercial, or private pesticide applicators, the department may adopt by rule the federal standards for each classification of applicators for which the federal standards are imposed.

Acts 1981, 67th Leg., p. 1197, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2589, ch. 693, Sec. 3, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 89, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.106. Classification of Licenses.

- (a) The head of each regulatory agency may classify commercial applicator and noncommercial applicator licenses under subcategories of license use categories according to the subject, method, or place of pesticide application.
- (b) A regulatory agency head shall establish separate testing requirements for licensing in each license use category for which the agency is responsible and may establish separate testing requirements for licensing in subcategories within a license use category.
- (c) Each regulatory agency may charge a testing fee, as fixed by the head of the regulatory agency, for testing in each license use category.

Acts 1981, 67th Leg., p. 1198, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 64, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 90, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.37, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 766, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.107. Licensing by More Than One Agency.

- (a) A person who wants to be licensed as a pesticide applicator under license use categories regulated by more than one regulatory agency may do so by paying a single license fee to the agency regulating the person's primary business and meeting licensing requirements for each category for which the person desires licensing.
- (b) A person licensed under this section must pay testing fees required by each regulatory agency.

Acts 1981, 67th Leg., p. 1198, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 91, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.108. Commercial Applicator License.

- (a) A person who operates a business or is an employee of a business that applies state-limited-use or restricted-use pesticides or regulated herbicides to the land of another person for hire or compensation and who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a commercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.
- (b) A person shall apply for an original or renewal commercial applicator license on forms prescribed by the regulatory agency. The application shall include information as required by rule of the head of the agency and must be accompanied by an annual license fee, as fixed by the head of the agency.
- (c) The head of a regulatory agency may not issue an original commercial applicator license before the applicant has passed an examination under Section 76.110 of this code.
- (d) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:
 - (1) the applicant has been convicted of a felony involving moral turpitude in the last five years;
 - (2) the applicant has had a license issued under this subchapter revoked within the last two years;

- (3) the applicant has been unable to satisfactorily fulfill licensing requirements; or
 - (4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this subchapter applicable to the license use category for which application is made.
- (e) An individual to whom a commercial applicator license is issued is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the individual is licensed.
 - (f) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

Acts 1981, 67th Leg., p. 1198, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 4, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 239, Sec. 65, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 92, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.38, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.109. Noncommercial Applicator License.

- (a) A person who is required to be licensed under Section 76.105 of this code but who does not qualify as a commercial applicator or a private applicator shall apply to the appropriate regulatory agency for a noncommercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.
- (b) A person shall apply for an original or renewal noncommercial applicator license on forms prescribed by the regulatory agency. The applicant shall include with the application an annual license fee, as fixed by the governing body of or the head of the regulatory agency. The governing body of or the head of the regulatory agency may set other fees as necessary to defray the costs of administering a pesticide applicator certification program.
- (c) The head of a regulatory agency may not issue an original noncommercial applicator license before the applicant has passed an examination under Section 76.110 of this code.
- (d) An individual to whom a noncommercial applicator license is issued by the department is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the individual is licensed.
- (e) If a license is issued in the name of a governmental entity, the entity must have a licensed applicator employed at all times. Failure to have a licensed applicator employed is a ground for revocation of a governmental entity noncommercial applicator license.
- (f) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.
- (g) An individual to whom a noncommercial applicator license is issued by the Texas Department of Health is authorized to use and supervise the use of general-use, restricted-use, and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.
- (h) Neither this section nor any other law shall prohibit a political subdivision from reducing the number of hours of training or other requirements for an employee conducting larval mosquito control on property owned or controlled by the political subdivision using biological pesticides approved for general use by the Texas Department of Health, provided the employee is given instructions adequate to ensure the safe and effective use of such pesticides.

Acts 1981, 67th Leg., p. 1199, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 5, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 239, Sec. 66, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 93, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.39, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 766, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 884, Sec. 1, eff. June 20, 2003.

Sec. 76.1095. Noncommercial Applicator License for Mosquito Control in Border Counties.

- (a) The department by rule shall provide for the issuance of a noncommercial applicator license that authorizes a person to purchase and use restricted-use and state-limited-use pesticides for the limited purpose of mosquito control in a county located along the international border with Mexico. To the extent practicable, the department shall minimize the fees and other requirements to obtain the license.
- (b) A person may apply to the department for an original or renewal noncommercial applicator license described by Subsection (a). A person must apply on forms prescribed by the department and include a fee in an amount determined by the department.
- (c) The department shall issue a noncommercial applicator license described by Subsection (a) to an applicant who meets the license requirements provided by department rule.
- (d) The department may solicit and accept gifts, grants, and donations to implement and administer this section. The department shall coordinate with appropriate federal agencies, state agencies, nonprofit organizations, public and private hospitals, institutions of higher education, and private entities in identifying and soliciting funding to implement and administer this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 398 (S.B. 1312), Sec. 1, eff. June 2, 2019.

Sec. 76.110. Commercial and Noncommercial Applicator Examination; Reciprocal Agreements.

- (a) Each person applying for a license as a commercial applicator or a noncommercial applicator must pass an examination demonstrating that the person:
 - (1) is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility; and
 - (2) has knowledge of the use and effects of restricted-use and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the person is to be licensed.
- (b) Not later than the 30th day after the date on which a licensing examination is administered under this section, the appropriate regulatory agency shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the appropriate regulatory agency shall notify examinees of the results of the examination not later than the 14th day after the date on which the appropriate regulatory agency receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the appropriate regulatory agency shall notify the examinee of the reason for the delay before the 90th day. The appropriate regulatory agency may require a testing service to notify examinees of the results of an examination.
- (c) If requested in writing by the person who fails a licensing examination administered under this section, the appropriate regulatory agency shall furnish the person with an analysis of the person's performance on the examination.
- (d) The appropriate regulatory agency may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state.

Acts 1981, 67th Leg., p. 1199, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 94, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 1.20, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.111. Applicator Businesses; Proof of Financial Responsibility.

- (a) In this section:
- (1) **"Applicator business"** means a person who applies a state-limited-use or restricted use pesticide or regulated herbicide to the land of another for compensation and who:
 - (A) is a licensed commercial applicator; or
 - (B) employs at least one licensed commercial applicator.
 - (2) **"M-44 device"** means a nonexplosive, spring-operated mechanical device designed to deliver a capsule of sodium cyanide into the mouth of the target animal as a method of livestock predation control.
- (b) This section does not apply to an employee or agent of an applicator business.
- (c) Except as otherwise provided by this section, each applicator business shall file with the regulatory agency issuing the license a liability insurance policy, certification of a policy, or other proof of financial responsibility considered acceptable by the department protecting persons who may suffer damages as a result of the operations of the applicator business, its employees, and its agents.
- (d) The proof of financial responsibility required by this section is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicator business, its employees, or its agents.
- (e) Except as otherwise provided by this section, the amount of the proof of financial responsibility may not be less than \$100,000 for each occurrence for property damage and may not be less than \$100,000 for each occurrence for bodily injury or a general aggregate at a minimum of \$200,000 for each occurrence. The head of a regulatory agency by rule may require different amounts of coverage for different classifications of operations under this chapter. Each commercial M-44 applicator license applicant must provide proof of financial responsibility acceptable to the department for bodily injury and property damage coverage insuring the applicator against liability for damage to persons or property occurring as a result of operations performed in the course of the application to premises or any other property under the applicator's care, custody, or control. The department will strive to set minimum acceptable coverage at an amount that is economically feasible to applicants. The coverage must at all times be maintained at not less than the amount set by the agency head or the Texas Department of Insurance.
- (f) The head of a regulatory agency may accept a liability insurance policy in the proper sum which has a deductible clause in an amount of not more than \$1,000 for the total amount of the liability insurance policy required by this section. If the applicator business has not satisfied the requirement of the deductible amount in any prior legal claim, an agency head may not accept a policy with a deductible clause unless the applicator business furnishes the agency with a surety bond that satisfies the amount of the deductible clause as to all claims that may arise as a result of the operation of the applicator business.
- (g) An applicator business shall cease state-limited-use or restricted-use pesticide or regulated herbicide application operations during a period in which the applicator business is unable to provide adequate proof of financial responsibility under Subsection (e).

Acts 1981, 67th Leg., p. 1200, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 6, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 223, Sec. 2, eff. May 28, 1987; Acts 1987, 70th Leg., ch. 630, Sec. 1, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 230, Sec. 95, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 117, Sec. 1, 2, eff. Sept. 1, 1999.

Sec. 76.112. Private Applicator.

- (a) A person is a private applicator if the person uses or supervises the use of a restricted-use or state-limited-use pesticide or regulated herbicide for the purpose of producing an agricultural commodity:
 - (1) on property owned or rented by the person or the person's employer or under the person's general control; or
 - (2) on the property of another person if applied without compensation other than the trading of personal services, or services related to agricultural production, including the use of equipment, between producers of agricultural commodities.
- (b) A private applicator is required to be either licensed or certified to use restricted-use or state-limited-use pesticides or regulated herbicides.
- (c) An employee qualifies as a private applicator under Subsection (a)(1) of this section only if he is employed to perform other duties related to agricultural production and provide labor for the pesticide application but does not provide the necessary equipment or pesticide.
- (d) A private applicator who is required to be licensed by Section 76.105 of this code shall apply to the department for a private applicator license.
- (e) A person shall apply for an original or renewal private applicator license on forms prescribed by the department. The application shall include information as required by department rule and must be accompanied by a fee, as fixed by the department.
- (f) The department may not issue an original private applicator license before the applicant has attended a training course conducted by the Texas Agricultural Extension Service or another training course approved by the department. The department shall approve appropriate training courses developed under the coordination of the Texas Agricultural Extension Service and to be conducted by other governmental agencies or nongovernmental entities. The training course shall cover the use, effects, and risks of restricted-use and state-limited-use pesticides or regulated herbicides.
- (g) The department may not issue a private applicator license if the applicant has had a license issued under this subchapter revoked within the last two years.
- (h) An individual to whom a private applicator license is issued is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.
- (i) As a condition to issuance of a private applicator license, an applicant located outside this state shall file with the department a written instrument designating a resident agent for service of process in actions taken in administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.
- (j) For purposes of this chapter, a certified private applicator is a private applicator who has been previously certified under the department's voluntary certification program and who holds a private applicator certificate dated prior to January 10, 1989. A certified private applicator is authorized to use restricted-use and state-limited-use pesticides or regulated herbicides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section. A certified private applicator may not supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides.

Acts 1981, 67th Leg., p. 1200, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 7, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 96, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.40, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.113. Term and Renewal of Licenses.

- (a) Each pesticide applicator license issued under this chapter, other than a private applicator license, expires at the end of the license period established by department rule.
- (b) Each private applicator license is valid for five years.
- (c) Except as provided by Subsection (d) of this section, a person having a valid license issued under this subchapter may renew the license for another term without retesting by paying to the regulatory agency the license fee required by this subchapter. A person who fails to apply for renewal of a license on or before the expiration date must pay, in addition to the annual license fee, the late fee provided by Section 12.024 of this code.
- (d) A licensee must undertake training, submit to retesting, or both, before renewal of a license if the head of the agency determines that additional knowledge is required for renewal.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 8, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 97, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 44, Sec. 2, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 6.04, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 6.05, eff. September 1, 2009.

Sec. 76.114. Records.

- (a) A regulatory agency shall require each commercial and noncommercial applicator licensee to maintain records of all pesticide applications. The department may require each commercial or noncommercial applicator licensee to keep records of the licensee's application of a specific restricted-use or state-limited-use pesticide or regulated herbicide and may require those records to be kept separate from other business records. The regulatory agency by rule shall prescribe the information to be entered into the records.
- (b) Each private applicator shall maintain records of regulated herbicide and state-limited-use pesticide applications and shall maintain those records of restricted-use pesticide applications required by federal law.
- (c) A licensee shall keep records required under this section for a period of two years from the date of the pesticide application. The licensee shall keep these records accessible and available for copying and shall store them in a location suitable to preserve their physical integrity.
- (d) On written request of the regulatory agency, a licensee shall furnish the department a copy of any requested record pertaining to the application of pesticides. The department may require all persons who apply a regulated herbicide to submit periodically to the department a copy of the records required by this section.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 98, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.115. Inspection of Equipment.

- (a) Each regulatory agency may inspect equipment used in the application of a restricted-use or state-limited-use pesticide.
- (b) A regulatory agency may require repairs or alterations of equipment before further use in the application of restricted-use or state-limited-use pesticides.
- (c) The department by rule may:
 - (1) provide requirements for and inspect equipment used to apply regulated herbicides; and
 - (2) regulate or prohibit the use of certain equipment in the application of regulated herbicides if that use would be hazardous in an area of the state.
- (d) Each piece of registered equipment shall be identified by a license plate or decal furnished by a regulatory agency at no cost to the licensee. The license plate or decal must be attached to the equipment in a manner and location prescribed by the regulatory agency.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.116. Suspension, Modification, or Revocation of License.

- (a) The head of a regulatory agency that licensed or certified an applicator may suspend, modify, or revoke a license or certificate, assess an administrative penalty, place on probation a person whose license or certificate has been suspended, reprimand a licensee or certificate holder, or take a combination of those actions if the head of the agency finds that the licensee or certificate holder has:
 - (1) made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state or the Environmental Protection Agency;
 - (2) operated in a faulty, careless, or negligent manner;
 - (3) refused, or after notice, failed to comply with an applicable provision of this chapter, a rule adopted under this chapter, or a lawful order of the head of a regulatory agency by which the licensee is licensed;
 - (4) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required by this chapter;
 - (5) failed to maintain financial responsibility as required by this chapter;
 - (6) made false or fraudulent records, invoices, or reports;
 - (7) used fraud or misrepresentation in making an application for a license or renewal of a license; or
 - (8) aided or abetted a certified, licensed, or an unlicensed person to evade the provisions of this chapter, conspired with a certified, licensed, or an unlicensed person to evade the provisions of this chapter, or allowed the licensee's license or the certificate holder's certificate to be used by another person.

- (b) A regulatory agency may temporarily suspend a license or certificate under this section for not more than 10 days after giving the licensee or certificate holder written notice of noncompliance.
- (c) If a license or certificate suspension is probated, the regulatory agency may require the person to:
 - (1) report regularly to the agency on matters that are the basis of the probation;
 - (2) limit practice to the areas prescribed by the agency; or
 - (3) continue or renew professional education until the person attains a degree of skill satisfactory to the agency in those areas that are the basis of the probation.
- (d) Except for a temporary suspension under Subsection (b) of this section, if the regulatory agency, except for the department, proposes to not renew, suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing before a hearings officer designated by the agency. The agency shall prescribe procedures by which all decisions to not renew, suspend, modify, or revoke are appealable to the governing officer or board of the agency.
- (e) Except for a temporary suspension under Subsection (b) of this section, if the department proposes to not renew, suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing conducted as provided under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.
- (f) An applicator whose license or certificate is under suspension or revocation by a regulatory agency may not apply restricted-use or state-limited-use pesticides or regulated herbicides under the direct supervision of another licensed applicator during that period of suspension or revocation.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 99, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 3.15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.117. Property Owner Use.

This chapter does not prohibit a property owner from using in the property owner's house, lawn, or garden a pesticide that is labeled for that use, other than a pesticide that may be registered or classified for use only by certified applicators.

Acts 1981, 67th Leg., p. 1202, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.118. Exemption for Licensed Veterinarians.

The other provisions of this chapter notwithstanding, a person who is licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners and who is only using a restricted-use or state-limited-use pesticide or a regulated herbicide as a drug or medication during the course of the veterinarian's normal practice or as a private applicator may not be required to obtain a license under this chapter to purchase or use the restricted-use or state-limited-use pesticide or regulated herbicide.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.119. Disclosure of Information Relating to Private Pesticide Applicator License Holders.

- (a) In this section, "predator control device" means a device that incorporates an active ingredient and is used for the control of livestock predators.
- (b) Except as provided by Subsection (c), a governmental entity in this state may not disclose:
 - (1) the name, address, or telephone number of a person who holds a private pesticide applicator license issued under this subchapter and is authorized to use a predator control device if disclosure of the person's name, address, or telephone number would reveal that the person:
 - (A) is authorized to use a predator control device;
 - (B) has used a predator control device; or
 - (C) has the intent to use a predator control device;
 - (2) the name, address, or telephone number of the owner or operator of land on which a predator control device has been used, is being used, or is intended to be used, if disclosure of the information would reveal that use or intended use; or
 - (3) information identifying the land on which a predator control device has been used, is being used, or is intended to be used, if disclosure of the information would reveal the name, address, or telephone number of the owner or operator of the land.
- (c) A governmental entity may disclose to the following the name, address, or telephone number of a person who holds a private pesticide applicator license issued under this subchapter, who is authorized to use a predator control device, and who either has used a predator control device or has the intent to use a predator control device:
 - (1) a person who holds a pesticide dealer license under Section 76.071 and is authorized to distribute predator control devices;
 - (2) another governmental entity in this state in connection with official business;
 - (3) the United States Environmental Protection Agency under a cooperative agreement entered into with that agency;
 - (4) any other agency of the United States that provides the governmental entity with an administrative or judicial subpoena for the information; or
 - (5) the appropriate agency or court in an administrative or judicial proceeding in which the private pesticide applicator license holder is a defendant.
- (d) A governmental entity and the officers and employees of the governmental entity are immune from civil or criminal liability for an unintentional violation of this section.

Added by Acts 2003, 78th Leg., ch. 1059, Sec. 1, eff. June 20, 2003.

Sec. 76.120. Emergency Mosquito Control by Certain Municipal or County Employees.

- (a) A municipal or county health department may apply for a waiver from the department authorizing the application of pesticides for mosquito control in the manner provided by this section if:
 - (1) the municipality or county is in a state of disaster as declared by the governor under Chapter 418, Government Code; or
 - (2) the municipal or county health department determines that immediate action is needed to control the threat of mosquito-borne disease.
- (b) On application by a municipal or county health department, the department may grant a waiver authorizing unlicensed employees of the municipality or county to apply pesticides for mosquito control under the direct supervision of a licensed applicator employed by the municipality or county, a nearby political subdivision, this state, or the federal government.
- (c) An unlicensed employee of the municipality or county may apply pesticides as authorized by a waiver if the unlicensed employee and the licensed applicator supervising the employee execute an affidavit promulgated by the department describing the supervision arrangement and return the affidavit to the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 344 (S.B. 1113), Sec. 1, eff. May 31, 2019.

Subchapter F. Storage and Disposal

Sec. 76.131. Rules.

- (a) The department may adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of:
 - (1) preventing injury from storage or disposal to man, vegetation, crops, or animals; and
 - (2) preventing any water pollution that is harmful to man or wildlife provided, however, that such rules be consistent with and not less stringent than Texas Natural Resource Conservation Commission rules adopted under Chapter 26 of the Water Code.
- (b) A person may not store or dispose of a pesticide in violation of a rule adopted by the department under this section.
- (c) Applicators and other entities covered by this chapter who normally store products listed under the FIFRA in an amount that exceeds 55 gallons, 500 pounds, or a lesser amount the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter, within one-quarter mile of a residential area composed of three or more private dwellings for more than 72 hours, shall provide to the fire chief of the fire department having jurisdiction over the storage place, in writing, the name and telephone number of the applicator or a knowledgeable representative of the applicator or other entity storing the product who can be contacted for further information or contacted in case of emergency.
- (d) On request, each applicator or entity shall provide to the fire chief having jurisdiction over the storage place a copy of a list of pesticides stored by the applicator or entity. The applicator or other entity shall notify the fire chief of any significant changes that occur relating to the stored pesticides if requested by the fire chief in writing.

- (e) The fire chief having jurisdiction over the storage place or the fire chief's representative, on request, shall be permitted to conduct on-site inspections of the pesticides stored for the sole purpose of preparing fire department activities in case of an emergency.
- (f) On request, the fire chief having jurisdiction over the storage place shall make the stored pesticide list available to members of the fire department having jurisdiction over the workplace and to personnel outside the fire department who are responsible for preplanning emergency activities, but may not otherwise distribute the information without approval of the applicator.

Acts 1981, 67th Leg., p. 1202, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 100, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.07, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.132. Disposal of Pesticide.

The department, in coordination with the Texas Commission on Environmental Quality and the Texas A&M AgriLife Extension Service, shall organize pesticide waste and pesticide container collection activities statewide. The department, the Texas commission on Environmental Quality, and the Texas A&M AgriLife Extension Service may contract for the services of contractors that are licensed in the disposal of hazardous waste under Section 401.202, Health and Safety Code, or other contractors to implement the pesticide waste and pesticide container collection activities and facilitate the collection of canceled, unregistered, or otherwise unwanted pesticide products and pesticide containers.

Added by Acts 2019, 86th Leg., R.S., Ch. 1025 (H.B. 191), Sec. 3, eff. September 1, 2019.

Subchapter G. Herbicides

Sec. 76.141. Regulated Herbicides.

- (a) After a public hearing on the issue, and in accordance with Subsection (b), the department by rule may adopt a list of regulated herbicides for the state or for one or more designated areas in the state.
- (b) The department may include a herbicide on the list of regulated herbicides if the department determines that, if used as directed or in accordance with widespread and commonly recognized practice, the herbicide requires additional restrictions to prevent a hazard to desirable vegetation caused by drift or an uncontrolled application.
- (c) A person may not distribute a regulated herbicide unless the person holds a dealer's license issued by the department.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.142. Application of Regulated Herbicide.

- (a) If a person applies a regulated herbicide, the person shall act in accordance with each applicable rule adopted by the department, including a rule adopted under this subchapter.
- (b) If a regulated herbicide is applied by a commercial applicator, the person in control of the crop or land to which the regulated herbicide is applied and the commercial applicator are jointly responsible for ensuring that the application is in compliance with this chapter and each applicable rule adopted by the department.
- (c) If the department finds that an application of a regulated herbicide is hazardous to crops or valuable plants in an area, the department may prohibit the application of a regulated herbicide in that area for any period during which the hazard exists.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.143. Public Hearing.

As soon as practicable after receiving a written request for a revision of a rule, an exemption from a requirement of this chapter, or a prohibition of the spraying of a regulated herbicide in an area, the department may hold a public hearing to hear the request.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.144. County Herbicide Regulations.

- (a) If the commissioners court of a county determines that a valuable crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide exists in an area of the county and that a departmental rule adopted or prohibition prescribed under Section 76.141 or 76.142 not currently applicable to the area should apply to the area, the commissioners court may enter an order in the minutes of the court under which the department's rule or prohibition under Section 76.141 or 76.142 becomes effective in the specified area of the county beginning January 1 of the following year.
- (b) If the commissioners court of a county determines that there is no longer a valuable crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide in the specified area of the county, the court may rescind its order under Subsection (a) effective January 1 of the following year.
- (c) The department shall adopt rules concerning the use of a regulated herbicide in a county in which the commissioners court has entered an order under Subsection (a) of this section.
- (d) The department may immediately suspend a rule of the department regarding the application dates of a regulated herbicide in an area of a county if:
 - (1) the commissioners court of the county established the applicability of the rule by adopting an order as provided by Subsection (a);
 - (2) the commissioners court requests that the department immediately suspend the rule; and
 - (3) the department determines that an imminent threat to agricultural interests exists in the county and if that threat is not immediately addressed by a suspension of the department's rule a significant economic loss will result.
- (e) Before the commissioners court of a county may enter an order under this section, the commissioners court shall hold a hearing to determine whether the order should be issued. Before the 10th day before the date on which the hearing is to be held, the commissioners court shall publish notice of the hearing in at least one newspaper in the county.
- (f) The commissioners court shall transcribe the hearing and make findings of fact based on the hearing and conclusions of law to support its order in the manner prescribed for a final order or decision in a contested case under Chapter 2001, Government Code.
- (g) Before the 21st day after the date on which an order under Subsection (a) is entered, an interested person may appeal the order to a district court in the county to test the reasonableness of the basis for the commissioners court order. The provisions of Subchapter G, Chapter 2001, Government Code, that apply to the judicial review of a contested case under the substantial evidence rule apply to the appeal, except that the appeal is brought in a district court for the county in which the appealed order applies. An appeal may be taken from the district court as in other civil cases.
- (h) The commissioners court of the county shall notify the department of a change in the status of a county or a portion of a county under this section.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Subchapter H. Enforcement

Sec. 76.151. Entry Power.

- (a) The department, at any time and without notice during regular business hours, may:
 - (1) enter and inspect a building or place owned, controlled, or operated by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code; and
 - (2) inspect and review any record maintained by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code.
- (a-1) The department may enter and inspect a building or place or inspect and review any record under Subsection (a) as necessary to:
 - (1) ensure compliance with this chapter or Chapter 1951, Occupations Code; or
 - (2) investigate a complaint made to the department.
- (b) A regulatory agency is entitled to enter any public or private premises at reasonable times to:
 - (1) inspect any equipment authorized or required to be inspected under this chapter or to inspect the premises on which the equipment is kept or stored;
 - (2) inspect or sample land exposed or reported to be exposed to a pesticide;
 - (3) inspect an area where a pesticide is disposed of or stored; or
 - (4) observe the use and application of a restricted-use or state-limited-use pesticide or regulated herbicide.
- (c) If a regulatory agency is denied access to any land to which access was sought at a reasonable time for any of the purposes listed in Subsection (b) of this section, the head of the regulatory agency may apply to a magistrate for a warrant authorizing access to the land for any of those purposes. On a showing of probable cause to believe that a violation of a rule relating to a purpose listed in Subsection (b) of this section has occurred, the magistrate shall issue the search warrant for the purposes requested.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 6.06, eff. September 1, 2009.

Sec. 76.152. Sampling.

The department is entitled to take a sample for official analysis from any package or lot of pesticides found within this state.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.153. Stop Use, Stop Distribution, or Removal Order

- (a) If the department has reason to believe that a pesticide is in violation of any provision of this chapter, the department may issue and enforce a written or printed order to stop the use or distribution of the pesticide or requiring the pesticide to be removed and secured from further distribution. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order may not sell, distribute, or use the pesticide until the department determines that the pesticide:
 - (1) is in compliance with this chapter; or
 - (2) does not present a hazard to the public health, safety, or welfare.
- (b) This section does not limit the right of the department to proceed as authorized by another section of this chapter.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.154. Injunction.

- (a) The department may sue in the name of the commissioner to enjoin any violation of a provision of this chapter. Venue is in the county in which the alleged violation occurred or is occurring.
- (b) A regulatory agency may request an appropriate prosecuting attorney or the attorney general to sue to enjoin a violation or threatened violation of a provision of this chapter that is within the agency's responsibility.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 9, eff. Sept. 1, 1981; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.155. Prosecutions.

The department may request the appropriate prosecuting attorney to prosecute a violation of a provision of this chapter.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 10, eff. Sept. 1, 1981; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.1555. Administrative Penalty.

- (a) If a person violates a provision of this chapter or Chapter 1951, Occupations Code, or a rule or order adopted by the department under this chapter or Chapter 1951, Occupations Code, the department may assess an administrative penalty against the person as provided by Section 12.020, except that the penalty for each violation may not exceed \$5,000. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment.
- (b) The department shall establish a schedule stating the types of violations possible under this chapter. The department is not required to comply with Subchapter B, Chapter 2001, Government Code, when establishing or revising the schedule. The department shall publish the initial schedule and any subsequent revision in the Texas Register before the schedule or revision is implemented.
- (c) If the department elects to assess an administrative penalty, no action for a civil penalty may be based on the same violation or violations.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 101, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (58), (59), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.16, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 6.07, eff. September 1, 2009.

Sec. 76.156. Civil Penalty.

- (a) A person who violates a provision of this chapter administered by a regulatory agency other than the department or a rule adopted by a regulatory agency other than the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000 for each day on which the violation occurs.
- (b) A person who violates a provision of this chapter administered by the department or a rule adopted by the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$10,000 for each violation, provided that the penalty shall not exceed \$25,000 for all violations related to a single incident.
- (c) No civil penalty may be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was or was not successful in collecting the administrative penalty.
- (d) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a civil penalty provided by this section.
- (e) The appropriate regulatory agency may request an appropriate prosecuting attorney or the attorney general to bring suit under this section.
- (f) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

Added by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 11, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 102, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Subchapter I. Remedies

Sec. 76.181. Appeal Of Denial Or Cancellation Of Pesticide Registration.

A person whose application for registration of a pesticide has been denied or whose registration for a pesticide has been canceled may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1204, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.182. Appeal Of Permit Or License Denial, Suspension, Modification, Or Revocation.

A person whose application for an experimental use permit, pesticide dealer license, commercial applicator license, noncommercial applicator license, or private applicator license has been denied or whose experimental use permit, pesticide dealer license, commercial applicator license, noncommercial applicator license, private applicator license, or private applicator certificate has been suspended for more than 10 days, revoked, or modified may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1204, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 103, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.183. Appeal Of Stop Use, Stop Distribution, Or Removal Order.

- (a) The owner or custodian of a pesticide to which a stop use, stop distribution, or removal order is imposed under Section 76.153 may appeal the order to a court of competent jurisdiction in the county where the pesticide is found.
- (b) Appeal under this section is by trial de novo.

Acts 1981, 67th Leg., p. 1204, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.184. Reports Of Pesticide Adverse Effects.

- (a) A person claiming adverse effects from an application of a pesticide may file with the appropriate regulatory agency a complaint report. The complaint report must contain the name of the person, if known, allegedly responsible for the application of the pesticide and the name of the owner or lessee of the land on which the pesticide was applied. The regulatory agency shall prepare a form printed in English and Spanish to be furnished to persons for use in filing complaint reports. The form may contain other information that is within the person's knowledge and requested by the head of the regulatory agency.
- (b) As soon as practicable after receiving a complaint report, the regulatory agency shall notify the licensee, the owner or lessee of the land on which the alleged application occurred, and any other person who may be charged with responsibility for the adverse effects claimed. The regulatory agency shall furnish copies of the complaint to those people on request.
- (c) To assess any adverse effects, the complaining party shall permit the regulatory agency and the licensee to observe, within reasonable hours, the land or nontarget organism alleged to have been adversely affected.
- (d) Failure to file a complaint does not bar a civil or criminal action from being filed and maintained.
- (e) The regulatory agency by rule may adopt procedures to be followed in the investigation of a report claiming adverse effects from an application of the pesticide.

Acts 1981, 67th Leg., p. 1204, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.185. Damages Resulting From Application Of Pesticide Under Government Program.

Notwithstanding other law, the owner or lessee of land on which a pesticide is applied is not responsible for damages resulting from the application of the pesticide or subject to a criminal or civil penalty in connection with the application of the pesticide if:

- (1) the pesticide is applied under a local, state, or federal government program that requires the application of the pesticide to the land; and
- (2) the owner or lessee of the land on which the pesticide is applied does not control or have a right to control the time and manner of the application of the pesticide to the land.

Added by Acts 1995, 74th Leg., ch. 227, Sec. 23, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Subchapter J. Penalties

Sec. 76.201. Offenses.

- (a) A person commits an offense if the person distributes within this state or delivers for transportation or transports in intrastate commerce or between points within this state through a point outside this state, any of the following:
- (1) a pesticide that has not been registered as provided by this chapter, except for a pesticide that is not for use in this state and is only being manufactured, transported, or distributed for use outside of this state;
 - (2) a pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;
 - (3) a pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by Section 76.021 of this code;
 - (4) a pesticide:
 - (A) that is of strength or purity that falls below the professed standard or quality expressed on its labeling or under which it is sold;
 - (B) for which a substance has been substituted wholly or in part;
 - (C) of which a valuable constituent has been wholly or in part abstracted; or
 - (D) in which a contaminant is present in an amount that is determined by the department to be a hazard;
 - (5) a pesticide or device that is misbranded; or
 - (6) a pesticide in a container that is unsafe due to damage.
- (b) A person commits an offense if the person:
- (1) detaches, alters, defaces, or destroys, wholly or in part, any label or labeling provided for by this chapter or a rule adopted under this chapter before the container has been emptied and rinsed properly;
 - (2) adds any substance to or takes any substance from a pesticide in a manner that may defeat the purpose of this chapter or a rule adopted under this chapter;
 - (3) uses or causes to be used a pesticide contrary to its labeling or to a rule of the department limiting the use of the pesticide;
 - (4) handles, transports, stores, displays, or distributes a pesticide in a manner that violates a provision of this chapter or a rule adopted by the department under this chapter; or
 - (5) disposes of, discards, or stores a pesticide or pesticide container in a manner that the person knows or should know is likely to cause injury to man, vegetation, crops, livestock, wild life, or pollinating insects.
- (c) A person other than a person to whom the pesticide is registered commits an offense if the person uses for the person's advantage or reveals, other than to a properly designated state or federal official or employee, a physician, or in emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under this chapter and marked as privileged or confidential by the registrant.
- (d) A person commits an offense if the person:
- (1) commits an act for which a certified applicator's license may be suspended, modified, revoked, or not renewed under Section 76.116 of this code; or
 - (2) violates any provision of this chapter to which this section does not expressly apply.

- (e) A person commits an offense if the person:
- (1) knowingly or intentionally uses, causes to be used, handles, stores, or disposes of a pesticide in a manner that causes injury to man, vegetation, crops, livestock, wildlife, or pollinating insects;
 - (2) violates Section 76.071(a);
 - (3) has a permit to apply a powder or dry-type regulated herbicide and applies a herbicide that does not meet the requirements of Section 76.144(c);
 - (4) violates a rule adopted under this chapter; or
 - (5) fails to keep or submit records in violation of this chapter.

Acts 1981, 67th Leg., p. 1205, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4864, ch. 857, Sec. 1, 2, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 230, Sec. 104, 105, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.202. Penalty.

- (a) Except as provided by Subsection (b) of this section, an offense under Section 76.201 of this code is a Class C misdemeanor, unless the person has been previously convicted of an offense under that section, in which event the offense is a Class B misdemeanor.
- (b) An offense under Section 76.201(e) of this code is a Class A misdemeanor, unless the person has been previously convicted of an offense under that subsection, in which event the offense is a felony of the third degree.

Acts 1981, 67th Leg., p. 1206, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 12, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4865, ch. 857, Sec. 3, eff. Sept. 1, 1983; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.203. Defenses.

- (a) It is a defense to prosecution under this subchapter that the defendant:
 - (1) is a carrier who was lawfully engaged in transporting a pesticide or device within this state and who, on request, permitted the department to copy all records showing the transactions in and movement of the pesticide or device;
 - (2) is a public official of this state or the federal government who was engaged in the performance of an official duty in administering state or federal pesticide law or engaged in pesticide research;
 - (3) is the manufacturer or shipper of a pesticide that was for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides and the manufacturer or shipper held a valid experimental use permit as provided by this chapter; and
 - (4) manufactured or formulated a pesticide or device solely for export to a foreign country and prepared or packed the pesticide or device according to the specifications or directions of the purchaser.
- (b) It is a defense to prosecution under Section 76.201(a)(3) of this code that the defendant is an applicator who, after acquiring an unbroken container, opened and transported the open container to and from application and storage sites as necessary.
- (c) It is an affirmative defense to prosecution under Section 76.201(e) of this code that the defendant was using, causing to be used, handling, storing, or disposing of the pesticide in accordance with a label that complied with this chapter and rules adopted under this chapter.

Acts 1981, 67th Leg., p. 1206, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4865, ch. 857, Sec. 4, eff. Sept. 1, 1983; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Chapter 7 - Texas Pesticide Regulations

Subchapter A General

RULE §7.1 Definitions

In addition to the definitions set out in the Code, §76.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Act**—Texas Agriculture Code, Chapter 76.
- (2) **Adjoining**—Directly contiguous to a field on which pesticides may be applied or which is separated from a field only by a road, railway, or utility right-of-way, or by a government-owned land corridor or waterway having a width of not more than 100 feet.
- (3) **Agricultural commodity**—A plant or animal grown for sale, lease, barter, feed, or human consumption and animals raised for farm or ranch work.
- (4) **Application**—The placing of a pesticide on a plant, animal, building, or soil; or its release into the air or water to prevent or destroy pests.
- (5) **Code**—The Texas Agriculture Code.
- (6) **Commissioner**—The commissioner of agriculture of the State of Texas, or the commissioner's designee.
- (7) **CEU**—Continuing Education Unit.
- (8) **Dealer**—Any person who distributes within or into this state any restricted-use or state-limited-use pesticides or regulated herbicides.
- (9) **EPA**—United States Environmental Protection Agency.
- (10) **Extension**—Texas A&M AgriLife Extension Service.
- (11) **Farm labor camp**—Housing used by one or more seasonal, temporary, permanent, or migrant workers and accompanying dependents which are owned, operated, or managed by the farm operator or licensed by the State of Texas.
- (12) **Farm operator**—The person responsible for the overall control and management of the crop.
- (13) **Formulation**—A mixture of active and inert ingredients prepared for use as a pesticide for practical use.
- (14) **Livestock**—Cattle, horses, mules, asses, sheep, goats, llamas, alpacas, exotic livestock, and hogs, unless otherwise defined.
- (15) **Person**—Includes any individual, partnership, association, corporation, company, joint stock association, governmental subdivision, public or private organization of any character, body politic or any organized group of persons, whether incorporated or not; including any trustee, receiver, assignee, or similar representative thereof.
- (16) **Purchase**—A transaction entailing payment for a pesticide, and delivery and/or physical possession of the pesticide to or by a licensed person or a person under the direct supervision of a licensed person.
- (17) **Regulated herbicide**—A herbicide product containing an active ingredient classified as a regulated herbicide by §7.30 of this title (relating to Classification of Pesticides).
- (18) **State-limited-use pesticide**—Any pesticide product containing an active ingredient classified as a state-limited-use pesticide by §7.30 of this title (relating to Classification of Pesticides).
- (19) **Trained trainer**—Anyone who has completed an EPA-approved WPS train-the-trainer program or a WPS-trained handler who may train workers only.
- (20) **Volatility**—The tendency of a substance to change from a liquid or solid to a gaseous state. It is the movement of a pesticide in a gaseous state in the air from surface water, soil, or vegetation.
- (21) **Worker Protection Standard (WPS)** - The federal worker protection standard as found in the Code of Federal Regulations, 40 C.F.R. Part 170.

Source Note: The provisions of this §7.1 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective February 17, 2015, 40 TexReg 687; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.2 Resident Agents

- (a) Any person designated by an out-of-state applicant as a resident agent for service of process in this state pursuant to Subchapters C, D, or E of the Act shall:
 - (1) be a citizen of this state; and
 - (2) maintain a permanent address within this state where documents dealing with the administration and enforcement of the Act may be served.
- (b) Any person required to designate a resident agent shall notify the commissioner in writing within 10 days of any change of a resident agent. Failure to give such notice shall be grounds for suspension of a registration, license or permit.
- (c) Failure by an out-of-state applicant to designate a resident agent may be grounds for denial of an application for registration, license or permit.

Source Note: The provisions of this §7.2 adopted to be effective December 4, 1997, 22 TexReg 11652.

Subchapter B Registration

RULE §7.10 Registration of Pesticides

- (a) In addition to the requirements contained in the Act, Subchapter C (concerning Registration), the application for registration shall include:
 - (1) a material safety data sheet (MSDS) which complies with the provisions set forth in 29 Code of Federal Regulations §1910.1200(g);
 - (2) an EPA-stamped accepted label and any applicable comments for a pesticide that must be federally registered under FIFRA;
 - (3) the EPA product code for each active ingredient; and
 - (4) A fee of \$600 per product registered for a two-year period. This fee may be prorated in accordance with subsection (f) of this section.
- (b) Product registration may be denied or revoked and the registration fee forfeited if the application is incomplete or inaccurate.
- (c) If the registrant distributes a pesticide under more than one brand name or more than one formulation, each brand or formulation must be registered as a separate product.
- (d) It shall be a violation to continue to distribute a pesticide for which a renewal application, including the required fee, has not been received on or before the last day of the current registration. It is the responsibility of the registrant to obtain and submit an application for registration of a pesticide before the renewal date as prescribed in subsection (f) of this section.
- (e) Late fees will be assessed on renewal applications postmarked after the renewal date as prescribed in subsection (f) of this section, as provided by the Code, §12.024.
- (f) All registered pesticide products must be renewed by the scheduled renewal date included in the registration package as provided by the department. Any newly registered product will be prorated by quarter so that the registration will expire at the same time as all other pesticide products of the registrant.

- (g) Any written recommendations allowed by FIFRA 2(ee) must be approved by the department prior to being released into the channels of trade.
- (h) Registration is not required for a chemical composition being used only to develop plot data on a total of 10 acres or less in the state.
- (i) After a product is registered with the department, the registrant shall provide the department the most current pesticide product label any time the product label is amended. Before distributing the revised product label, the registrant must have written department approval and have met any additional federal requirements.

Source Note: The provisions of this §7.10 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective September 1, 2003, 28 TexReg 7344; amended to be effective January 1, 2016, 40 TexReg 9615; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.11 Label Requirements

Each pesticide distributed in this state shall bear a label containing the following information related to the pesticide:

- (1) the label information required by FIFRA, if the pesticide is subject to registration under that law; or
- (2) the following information, if the pesticide is not subject to registration under FIFRA:
 - (A) the accepted common name and/or chemical name of all active ingredients;
 - (B) the percentage by weight of each active ingredient and the percentage by weight of all inert ingredients;
 - (C) the name for each ingredient using the accepted common name, if there is one, followed by the chemical name; and
 - (D) a statement of percentages except that a sliding scale method of expressing percentages shall not be used (example: active ingredient name—6.0% to 8.0%);
- (3) the directions for use including, but not limited to the following:
 - (A) that it is a violation of federal and state law to use this product in a manner inconsistent with its labeling;
 - (B) to keep out of reach of children;
 - (C) application rates of product to be applied;
 - (D) proper mixing procedures;
 - (E) application methods;
 - (F) application limitations;
 - (G) restricted entry and preharvest intervals; and
 - (H) clean-up, storage, and disposal instructions;
- (4) the net weight or measure of contents, exclusive of wrappers, or other materials:
 - (A) the net weight or measure of contents shall be the average contents unless explicitly stated as a minimum quantity;
 - (B) if the pesticide is a liquid, the net content statement shall be in terms of liquid measure at 68 degrees Fahrenheit (20 degrees Celsius) and shall be expressed in conventional American units of fluid ounces, pints, quarts, and gallons;
 - (C) if the pesticide is a solid or semisolid, viscous or pressurized, or is a mixture of liquid and solid, the net content statement shall be in terms of weight expressed as avoirdupois pounds and ounces;

- (D) in all cases, net content shall be stated in terms of the largest suitable units (for example: "onepound, 10 ounces," not "26 ounces");
 - (E) in addition to the required units, specific net content may be expressed in metric units; and
 - (F) variation above or below minimum content or around an average is permissible only to the extent that it represents deviation unavoidable in good and workman like manufacturing practice; and
- (5) numbers or other symbols to identify the manufacturer's lot and batch. These shall be stamped on the pesticide container any place where they can be readily seen; provided, however, it shall be unlawful to have more than one lot or batch number in a single package.

Source Note: The provisions of this §7.11 adopted to be effective December 4, 1997, 22 TexReg 11652.

RULE §7.12 Custom Blends

- (a) A custom blend is a pesticide-fertilizer, pesticide-pesticide, or a pesticide-animal feed mixture that is produced on special request for a specific customer. Custom blends shall only be distributed or prepared according to the following criteria:
- (1) the custom blend is prepared to the order of the customer and is not held in inventory by the blender;
 - (2) the custom blend is to be used on the customer's property (including leased or rented property);
 - (3) the pesticide(s) used in the custom blend bears end-use labeling directions which do not prohibit use of the product in such a custom blend;
 - (4) the custom blend is prepared with registered pesticides;
 - (5) the custom blend is delivered or distributed to the customer along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture; and
 - (6) no other pesticide production activity is performed at the establishment.
- (b) If a restricted-use or state-limited-use pesticide or regulated herbicide is used in the custom blend, the establishment must be licensed as a pesticide dealer in accordance with the Act, Chapter 76, Subchapter D (relating to Licensing of Dealers), and §7.20 of this chapter (relating to Application).
- (c) Any pesticide containers used in preparing a custom blend, in which a partial amount(s) is still contained within the container, must be prominently identified as a pesticide to be used by that establishment only in a custom blend or in a commercial application made by that establishment.

Source Note: The provisions of this §7.12 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.13 Special Local Needs

Before approving the registration of a pesticide under the Act, §76.045, the department shall determine:

- (1) that a local need exists;
- (2) that the applicant meets all federal requirements for registration of a pesticide;
- (3) that the particular use of the pesticide has not been denied, suspended, or canceled by the EPA; and
- (4) that the product's efficacy data support the claims made for it in Texas prior to approval of the application by the department.

Source Note: The provisions of this §7.13 adopted to be effective December 4, 1997, 22 TexReg 11652.

RULE §7.14 Experimental Use Permits

- (a) All experimental use permits (EUP) shall be issued and approved by the EPA prior to submission to the department for approval.
- (b) Application for department approval of the EUP shall contain the following information:
 - (1) the name and address of the applicant;
 - (2) the name of the manufacturer of the product;
 - (3) the name and address of the person responsible for the experimental program, if different from the applicant;
 - (4) the name of the pesticide and approved EUP permit number of the product;
 - (5) an ingredient statement;
 - (6) the use(s) requested for the EUP;
 - (7) the estimated amount of the product to be used;
 - (8) the name and address of all cooperators and location of the proposed EUP application site(s); and
 - (9) the proposed method of storage and disposition of any unused experimental use pesticide and its container.
- (c) The holder of an EUP shall, as soon as available, submit to the department the results of the experimentation for which the permit was issued.
- (d) A person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives, and having so received, delivers or offers to deliver any pesticide may not place or sponsor advertisements in this state which recommend or suggest the purchase or use of a pesticide for a use authorized under an EUP, whether the EUP has been approved by the department or not.

Source Note: The provisions of this §7.14 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

Subchapter C Licensing

RULE §7.20 Application

- (a) An application for a commercial, noncommercial or private applicator license will be deemed complete when the applicator has met the applicable licensing requirements.
- (b) Application for pesticide dealer or applicator license shall be made on a form prescribed by the department.
- (c) Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), the license shall expire on the last day of the month corresponding to the license anniversary date. Renewals made after the expiration date are subject to applicable late fees.
- (d) Except as provided by Chapter 2, Subchapter B of this title, licensing time periods and corresponding licensing and renewal fees are:
 - (1) Dealers: \$250 for two years; and
 - (2) Applicators:
 - (A) Commercial: \$200 for one year;
 - (B) Noncommercial: \$140 for one year;

- (C) Noncommercial applicators employed by a political subdivision of the State of Texas or of a federal agency operating in Texas who utilize the license solely in the course of their employment: \$75 for one year;
 - (D) Private: \$100 for five years; and
 - (E) Certified Private: fee exempt. This certificate is no longer issued and was only available to individuals certified prior to January 10, 1989. Existing certificates may be renewed and are fee exempt.
- (e) A pesticide applicator or dealer's license is not transferable. Change of ownership of an outlet or facility shall require a new application and applicable fees to be submitted.
 - (f) The licensee shall notify the department within 30 days of any change in the information provided as part of the application for a license. Failure to provide such information may be grounds for denial, suspension, or revocation of the license.
 - (g) A commercial or noncommercial applicator in good standing may convert the license between these two categories by making application to the department and meeting the requirements for that license, including fees.

Source Note: The provisions of this §7.20 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective April 23, 1998, 23 TexReg 3822; amended to be effective September 1, 2003, 28 TexReg 7344; amended to be effective November 2, 2005, 30 TexReg 7035; amended to be effective January 1, 2016, 40 TexReg 9615; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.21 Applicator Certification

- (a) **Certification of Applicators.** The department may certify pesticide applicator licensees and applicants for a license in the following license use categories and subcategories. An individual who is certified in a particular category is authorized to purchase, apply, or supervise the use of restricted use pesticides, state-limited-use pesticides, or regulated herbicides described by that category subject to department orders, the Act, and federal law.
 - (1) Agricultural pest control: pesticide applications made to agricultural land as specified in the following subcategories:
 - (A) **field crop:** to control insects, diseases, weeds, or other pests of field crops, or the use of harvest aid pesticides in the production of field crops such as cotton, grains, oilseed crops, crops grown for seed, or crops harvested for animal feed (hay) or forage. This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);
 - (B) **fruit, nut, and vegetable:** to control insects, diseases, weeds, or other pests, or the use of harvest aid pesticides, in the production of non-citrus fruit (category 1G Citrus Pest Control), nut and vegetable crops. This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);
 - (C) **pasture and rangeland:** to control insects, diseases, weeds, or other pests of field crops, agricultural pastures, rangeland, or adjacent riparian or natural areas, and may include applications to pasture or rangeland vegetation that is harvested for animal feed (hay). This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);
 - (D) **vertebrate pest:** to control vertebrate pests affecting agricultural production of field, fruit, nut or vegetable crops, in turf, pastures, rangeland, riparian or natural areas, rights of ways, parks, or crops/vegetation to be harvested for animal feed. This category does not include pesticide applications covered in category 1H (livestock protection collar) or category 1I (M-44 device). Certification in this category requires prequalification as determined by the department;

- (E) **farm commodity pest control:** to apply pesticides (including commodity fumigants) to stored raw agricultural commodities on the farm, in a public or private confined storage facility or container, in an open storage platform or vehicle, or to agricultural equipment used to transport raw agricultural commodities, to control pests of a stored agricultural product or a pest subject to a state or federal quarantine requirement;
 - (F) **animal health:** to control external parasites or pests of agricultural animals including applications of pesticides to, in, or on any area, facility, or vehicle used for the housing, maintenance, or transportation of an agricultural animal;
 - (G) **citrus:** to control insects, diseases, weeds, or other pests in the production of citrus plants or citrus fruit. This category does not include the pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);
 - (H) **livestock protection collar:** for the use of a livestock protection collar containing sodium fluoroacetate (Compound 1080) for predator control in the protection of livestock. Specialized training provided by the department is a prerequisite for this category;
 - (I) **M-44 device:** for the use of an M-44 device for the control of wild or feral canids in the protection of livestock. Specialized training provided by the department is a prerequisite for this category;
- (2) **Forest pest control:** to apply pesticides in forests, forest nurseries, and forest seed production;
 - (3) **Lawn and ornamental plant pest control;** and
 - (A) **landscape maintenance:** to control pests in the establishment or maintenance of lawns or ornamental plants grown for function or aesthetic purposes in landscapes, such as athletic fields, residential properties, industrial sites, golf courses, parks, and cemeteries. This category does not include the pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation); and
 - (B) **nursery plant production:** to control pests in the production of ornamental plants or other nursery stock and commercial turf. This category includes plants in field production, greenhouses, shade houses, or similar structures. This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigation);
 - (4) **Seed treatment:** to control pests by treating seed prior to distribution or planting. This category is not required for planter box applications if the applicator is certified in the appropriate agricultural category or is a private applicator;
 - (5) **Vegetation management:** to control unwanted plant growth in rights-of-way, in the maintenance of roads, parking lots, utility lines, wind generator sites, pipelines, railways, airports, public surface drainways and ditches, industrial sites including oil field sites, adjacent riparian or natural areas and includes public sewer root control;
 - (6) **Aquatic:** to control aquatic weeds or other aquatic pests including aquatic animals, microbes, or other pests and may include pesticide applications to adjacent riparian or natural areas when water is present. The category does not include pesticide application covered in category 12 (public health pest control (vector control));
 - (7) **Demonstration and research:** for demonstration or research purposes when using restricted-use pesticides, numbered compounds, any pesticide not registered by the EPA (unless exempt from registration under FIFRA Section 25(b)), or any pesticide used in a manner inconsistent with the label directions;
 - (8) **Regulatory pest control:** for applications of pesticides when implementing a regulatory program such as a plant pest quarantine, invasive weed control, or other regulated activity conducted by a state, federal or other political subdivision. This category does not include pest control category 12 (public health pest control (vector control));

- (9) **Aerial application:** The use of a pesticide applied by aircraft to any crop or site. In addition to certification in this category, certification in one or more of the appropriate use categories is required;
- (10) Category unassigned;
- (11) **Soil fumigation:** to apply fumigant pesticides to soil environments. This category is available for all pesticide license types and meets the pesticide product label requirement for EPA approved soil fumigant training. Private applicators may apply soil fumigant pesticides without adding this category, however additional EPA-approved training stipulated on the use directions of a soil fumigant pesticide label must be met;
- (12) **Public health pest control (vector control):** for pesticide applications made for the purpose of treating, repelling, mitigating, or otherwise controlling any non-human organism that is, or may be, a vector of human disease by a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district, or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district or other political subdivision; and
- (13) **Border mosquito control:** for pesticide applications made for the limited purpose of vector mosquito control only in a county located along the international border with Mexico by an applicator who is an employee of a federal, state, county, city, mosquito or vector control district or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of a federal, state, county, city, mosquito or vector control district or other political subdivision. An applicator who is licensed in this category shall have their license expire immediately upon separation of employment if a passing score in another category is not achieved prior to the date separation of employment from the political subdivision. This excludes employees transferring from one political subdivision to another in a county along the international border with Mexico.

(b) **Private Applicators.**

- (1) Producers of agricultural commodities who complete an Extension or other department-approved training program for private applicators and obtain a passing score on the private applicator test may be certified in each of the categories and subcategories listed in subsection (a)(1)(A) - (G), (2), (3), (4), and (6) of this section. A private applicator may be certified as an aerial applicator by obtaining a passing score on the aerial applicator category test. Private applicators will be charged an exam administration fee of \$64 for initial testing or retesting. The fee will not be in excess of expenses directly related to recovery of costs for administration of examinations.
- (2) The department may allow an entity other than Extension to conduct private applicator certification training if the training program:
 - (A) has significant educational or practical content to maintain appropriate levels of competency;
 - (B) consists of at least three hours of net instruction time;
 - (C) complies with all applicable federal and state laws including the Americans with Disabilities Act (ADA) requirements for access to training programs; and
 - (D) is submitted to the department for review and prior approval.
- (3) An approved training program may include lectures, panel discussions, organized video or film with live instruction or other forms of instruction approved by the department.

- (4) Private applicator certification training program content must include, but is not limited to:
 - (A) recognition of common pests to be controlled and the damage caused by them;
 - (B) reading and understanding laws and regulations and label and labeling information, including the common name of the pesticide to be applied, pest to be controlled, application timing and methods, safety precautions, pre-harvest or reentry provisions and any specific disposal procedures;
 - (C) application of pesticides in accordance with label instructions and warnings, including the ability to prepare the proper pesticide concentration to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven and the quantity dispersed in a given period;
 - (D) recognition of local environmental situations that must be considered during application to avoid contamination;
 - (E) recognition of poisoning symptoms and procedures to be followed in case of a pesticide related accident; and
 - (F) recognition and identification of Integrated Pest Management (IPM) strategies applicable to the agricultural operation.
- (5) The department may deny, revoke, or refuse to renew approval for any or all private applicator training program or sponsor if the sponsor fails to:
 - (A) provide to the department records of training on request;
 - (B) provide the quality of approved training; or
 - (C) comply with any other requirements that are a basis for approval.
- (6) The department may request prior notification of any scheduled training programs to be offered by the sponsor.
- (7) Each training program must be approved by the department. No unapproved activity may be claimed to be approved or described in a way that would lead a person to believe that it has been approved.
- (8) Each training program shall be approved for one calendar year.
- (9) Department personnel may monitor all approved private applicator training programs. All fees charged to trainees shall be waived for them.
- (10) Upon completion of private applicator training, the sponsor shall direct trainees to the department for testing.
- (11) To receive approval for a private applicator training course, the sponsor must:
 - (A) submit an application on a form prescribed by the department;
 - (B) provide any additional information related to the proposed course by the department; and
 - (C) submit the application and all requested and required information at least 30 days prior to the date the proposed course is intended to be initially held. The department may waive this requirement if the sponsor meets all other requirements. Within ten days of receipt of the application, the department will notify the sponsor if the proposed course has been accepted or rejected or will request additional information.
- (12) A sponsor who wishes to continue course's approval beyond a calendar year must file for renewal as provided by paragraph (11) of this subsection.

Source Note: The provisions of this §7.21 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective February 17, 2015, 40 TexReg 687; amended to be effective January 1, 2016, 40 TexReg 9615; amended to be effective September 7, 2021, 46 TexReg 5545; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.22 Licensing of Applicators

- (a) All pesticide examinations administered by the department under the authority of the Act, Subchapter E, shall be designed to cover the information necessary for an applicant to demonstrate competency to use and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in a safe and effective manner.
- (b) The department may enter into a memorandum of agreement with another state or a federal agency for reciprocity in licensing pesticide applicators.
- (c) Doctors of veterinary medicine are exempted from licensing when:
 - (1) applying restricted-use or state-limited-use pesticides or regulated herbicides as drugs or medication during the course of normal practice; or
 - (2) when applying any pesticides not classified as restricted-use by EPA to property owned, rented or under the veterinarian's general control.
- (d) Commercial and noncommercial applicators must meet the following requirements:
 - (1) Anyone who makes a passing score on the General Standards pesticide applicator examination, including laws and regulations, and on one or more category exams will be eligible to be certified in those categories or subcategories for which a passing score was received and shall be licensed as soon as all other licensing requirements are met.
 - (2) An exam administration fee of \$64 shall be required for administering each pesticide certification exam including the General Standards exam and each license use category and subcategory, and must be paid at the time the exam or exams are given. Fees for retakes of the General Standards exam or any pesticide certification category examination or subcategory examination may be charged to recover costs of exam administration.
 - (3) Individual exam scores are valid for only 12 months.
- (e) Employees of state universities or state agencies may convert to a commercial or noncommercial license upon termination of employment by paying the required fee provided that all licensing requirements have been satisfied. Employees of state universities or state agencies who obtained their license through specialized training, testing and a Memorandum of Agreement with the department shall be prohibited from converting a license.

- (f) Private applicators must meet the following requirements:
- (1) A private applicator certification or license may be revoked by the department if the applicator is not engaged in the production of an agricultural commodity.
 - (2) An employee who qualifies as a private applicator under the Act, §76.112(c), is not considered to be providing equipment or pesticide when the employer is identified on the private applicator's certification license application or amendment thereof, and either:
 - (A) the pesticide or equipment is purchased by the private applicator using a check, cash, or account of the employer; or
 - (B) the private applicator is reimbursed by the employer for the equipment or pesticide.
 - (3) Upon completion of the private applicator training, the trainee has one year to pass the private applicator examination without having to retrain. Retraining and retesting shall be required of anyone who does not complete requirements for licensing within five years of passing the private applicator exam.
 - (4) Military service members and military veterans, as defined in Texas Occupations Code, Chapter 55, will be credited with experience equivalent to the training required by §7.21(b)(4)(A) - (F) of this chapter (relating to Applicator Certification).

Source Note: The provisions of this §7.22 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 14, 1998, 23 TexReg 7221; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective September 1, 2003, 28 TexReg 7344; amended to be effective January 29, 2014, 39 TexReg 396; amended to be effective January 1, 2016, 40 TexReg 9615; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.23 Applicator Business Proof of Financial Responsibility

Each applicator business, as defined in the Act, §76.111, shall register with the department prior to making any applications of restricted-use or state-limited-use pesticides or regulated herbicides. This requirement shall be satisfied in the following manner.

- (1) If the applicator business is a licensed commercial applicator, the applicator shall, on application for the commercial applicator license, attest to the existence of adequate financial responsibility in the amounts and under the terms stated in the Act, §76.111, on a form provided by the department.
- (2) An applicator business that is not a licensed commercial applicator, but instead employs one or more licensed commercial applicators, shall attest to the existence of adequate financial responsibility in the amounts and under the terms stated in the Act, §76.111, on a form provided by the department.
- (3) Commercial applicators who are employees or agents of an applicator business shall be required to state, on application for their commercial applicator license, the name of the applicator business by whom they are employed. Employees or agents of an applicator business are prohibited from making any applications of restricted-use or state-limited-use pesticides or regulated herbicides until such time as the applicator business has complied with paragraph (2) of this section.
- (4) The applicator business shall notify the department within 30 days of any change in the information provided as part of the registration application.
- (5) For purposes of this section, financial responsibility means a liability insurance policy in the name of the applicator business meeting the requirements of the Act, §76.111, pertaining to such insurance policies. The department has determined that no other form of financial responsibility is acceptable.

Source Note: The provisions of this §7.23 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective November 2, 2005, 30 TexReg 7035; amended to be effective May 4, 2008, 33 TexReg 3569; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.24 Applicator Recertification

- (a) All applicators must meet recertification requirements through completion of approved continuing education activities.
- (b) Approved activities may include lectures, panel discussions, organized video or film with live instruction, field demonstrations, or other activities approved by the department.
- (c) Each activity must be approved by the department. No activity may claim to be approved or accepted by the department or use any other such term that would lead an applicator to believe that it has been approved by the department for recertification unless it is so approved.
- (d) The department shall assign one continuing education unit (CEU) for each 50 minutes of net actual instruction time presented at an approved activity. Accreditation will consist of no less than one CEU for any given course or session. Accreditation in one-half CEUs may be allowed as determined by the department.
- (e) To be eligible for approval, the department will require:
 - (1) that the activity have significant educational or practical content to maintain appropriate levels of competency;
 - (2) that the activity be conducted by a university, a governmental agency, an association, or a private independent nonapplicator business;
 - (3) that each activity has a recordkeeping procedure for verifying applicator attendance using department forms or approved formats;
 - (4) that activities cover one or more of the following topics pertaining to pesticides:
 - (A) label and labeling comprehension;
 - (B) safety factors;
 - (C) environmental consequences;
 - (D) pest features;
 - (E) integrated pest management strategies/pest management practices;
 - (F) pesticide factors;
 - (G) equipment characteristics;
 - (H) application techniques/drift minimization;
 - (I) laws and regulations;
 - (J) biotechnology/transgenic crops; or
 - (K) business ethics; and
 - (5) the activity is able to comply with all applicable federal and state laws, including the Americans With Disabilities Act (ADA) requirements for access to activities.

- (f) The department may consider for approval “correspondence activities” such as videos, interactive internet, and/or other activities approved by the department. To be eligible for approval the department will require:
 - (1) that the course sponsor complies with the specifications and requirements listed under subsections (a) - (e) of this section; and
 - (2) that the activity include an open book measure of competency approved by the department.
- (g) For commercial and noncommercial applicators only, the department may consider for approval, an intensive specialized training, equivalent to a maximum of a three-year recertification credit. Correspondence activities will not be allowed for this method of acquiring CEUs.
- (h) Prior approval shall not be required for applicator recertification courses of up to three CEUs conducted by Extension faculty or department personnel for any pesticide applicator, provided that all other requirements for course content and records are met. The department may enter into a memorandum of agreement with Extension regarding the specific requirements for applicator recertification. Correspondence activities are excluded from this provision.
- (i) Department personnel may monitor all approved activities, and all fees charged by the sponsor shall be waived for department personnel who monitor the recertification activity.
- (j) The department may deny, revoke, or refuse to renew approval for any or all courses of a sponsor if the sponsor fails to file a timely activity report, fails to provide the quality of activity approved by the department, or fails to comply with any other requirements that are a basis for approval or that are a part of these rules.
- (k) The department may enter into a memorandum of agreement with another state or non-profit professional society or association to recognize the state’s pesticide applicator recertification or the society’s professional recertification for satisfaction of the requirements of this section for commercial, noncommercial, and private applicator recertification only if:
 - (1) the standards for recertification meet or exceed the standards for the one-year or five-year recertification periods as set out in this section; and
 - (2) the agreement reduces duplication of effort and does not increase the recordkeeping burden of the department.
- (l) Each continuing education activity shall be approved for one calendar year only.
- (m) In order for a recertification activity to be approved by the department, the sponsor must:
 - (1) submit a completed department-prepared application form;
 - (2) provide any additional material relevant to the activity which is requested by the department; and
 - (3) submit the application and information required by the department at least 30 days in advance of the first date of the activity. The department may waive the 30-day provision providing all other requirements are met. The department will respond to the sponsor within ten days of receipt of the application and approve, reject, or request additional information.
- (n) Sponsors who wish to continue approval must file for renewal annually on a form prepared by the department.

- (o) Sponsors of approved activities shall:
 - (1) prepare a roster of applicators who complete the activity which contains, at a minimum, the date, course number, number and type of accredited CEU(s), the pesticide applicator's name and current license or certificate number, the name and contact information of the course provider, and the location of the training;
 - (2) distribute a completion certificate at the time of the activity to applicators who successfully complete an activity, which shall indicate the name of the sponsor, the date, county and name of the activity, the amount and type of credit earned, and the assigned course number;
 - (3) provide the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or department approved format;
 - (4) ensure that CEUs awarded correspond proportionately to the net instruction time; and
 - (5) maintain activity rosters for a period of two years from the date of activity. Rosters are to be made available to the department upon request.
- (p) Sponsors of approved correspondence activities shall:
 - (1) prepare a roster of applicators who complete the activity which contains, at a minimum, the date, course number, number and type of accredited CEU(s), the pesticide applicator's name and current license or certificate number, the name and contact information of the course provider, and the location of the training;
 - (2) distribute a completion certificate in a timely manner to applicators who successfully complete an activity, which shall indicate the name of the sponsor, the date, county and name of the activity, the amount and type of credit earned, and the assigned course number;
 - (3) provide the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or in a department-approved format;
 - (4) ensure that CEUs awarded correspond proportionately to the net instruction time;
 - (5) ensure the establishment of procedures to prohibit an individual from repeating the sponsor's course in two consecutive recertification periods; and
 - (6) maintain activity rosters for a period of two years from the date of activity. Rosters are to be made available to the department upon request.
- (q) Governmental agencies may enter into an agreement with the department for annual submission of recertification records of agency employees attending a recertification program approved for the agency by the department.
- (r) No credit will be given for time used to promote the sponsor or other activities of the sponsor or for time used for organizational, political, procedural, or other nonrelevant activities.
- (s) Applicators will recertify through a self-certification program. Each applicator will be required to maintain proof of the number of CEUs necessary to renew a license or certificate. Certificates of completion verifying attendance at approved activities during the previous licensing period must be maintained by the applicator for a period of 12 months after the most recent renewal of their license or certificate. The department may audit the CEUs an applicator has obtained during an onsite inspection or by letter requesting that copies of certificates of completion be mailed to the department. Certificates of completion will be compared with course attendance rosters on file with the department. Credits obtained at a single course cannot be split or divided between licensing periods.
- (t) Except as provided in paragraph (1) of this subsection, each commercial or noncommercial applicator must obtain at least five CEUs prior to the expiration of the license. A minimum of one hour each must be obtained from two of the following categories: integrated pest management, laws and regulations or drift minimization.

- (1) For commercial or noncommercial applicators certified in the aerial application category, three of the required five CEUs must be associated with aerial application operations to include one CEU each in:
 - (A) laws and regulations;
 - (B) drift minimization; and
 - (C) pesticide safety activities addressing human factors. "Human factors" in aerial application is the portion of the aerial application mission which is guided or influenced by human characteristics. This includes pre-flight, post-flight, and cockpit decision-making that affects the safe operation of the aircraft, the pilot, farm workers, bystanders, or those that may be affected by the aircraft during its pesticide application mission.
- (2) A commercial or noncommercial applicator may not recertify their license using department-approved correspondence activities for two consecutive years.
- (u) An applicator who becomes unlicensed in any licensing year may not be relicensed for 12 months unless all CEUs required for the last year of licensing are completed. Until the 12-month period has elapsed, applicators are prohibited from retesting under §7.22 of this chapter (relating to Licensing of Applicators).
- (v) Private applicators must recertify as follows:
 - (1) Each licensed private applicator must obtain 15 CEUs within a five-year period including at least two CEUs in laws and regulations and two CEU in integrated pest management.
 - (2) Each licensed private applicator must obtain 15 CEUs prior to their license expiration date.
 - (3) Private applicators issued a certificate prior to January 10, 1989, may fulfill their recertification requirement on a one-time only basis by completing the Extension private applicator training program, attaining a passing score on the private applicator test, and obtaining a private applicator license. Certified private applicators who choose not to license but wish to maintain certification under a certificate issued prior to January 10, 1989, will be required to recertify as specified for licensed private applicators in this subsection.
 - (4) private applicators have the option of forgoing continuing education requirements for a recertification period by following these procedures:
 - (A) Take and pass a comprehensive examination administered by the department which will contain questions relevant to those topics which would be covered at various continuing education activities. A certificate of completion worth 15 CEUs will be issued by the department upon a passing score being attained by the applicator.
 - (B) If the applicator fails the examination, subsequent attempts will be allowed until a passing score is attained. If a passing score is not attained, the applicator may obtain the required CEUs pursuant to this subsection.
 - (C) Pay a required fee of \$64 for the administration of each recertification examination.
 - (5) A private applicator may not obtain more than 10 CEUs through correspondence activities in any five-year recertification cycle.
- (w) Failure to comply with the continuing education requirements for commercial, noncommercial and private applicators will:
 - (1) result in nonrenewal of an applicator's license or certification until the necessary credits for continuing education are attained;
 - (2) prohibit the applicators from retesting for a new license in lieu of meeting recertification requirements until one year after the expiration of the license;

- (3) require the applicator to take and pass comprehensive department examinations for general knowledge and for each category in which the applicator seeks to be licensed if the applicator does not recertify and renew in one year following the expiration of the license;
 - (4) require retraining of commercial, noncommercial or private applicators for categories or subcategories requiring special training if the applicator does not recertify and renew in one year following the expiration of the license; and
 - (5) subject a noncompliant applicator to administrative, civil or criminal penalties and/or license or certificate revocation, suspension, modification, or probation for failure to comply with continuing education requirements if the applicator operates under a license that has not been renewed.
- (x) An applicator may seek credit for a continuing education activity that has not been submitted by the sponsor to the department, and the department will evaluate the supporting documentation of the course and assign the appropriate number of credits for the activity. To be eligible for accreditation, the following conditions must be met:
- (1) the activity must contain course content of the highest standards;
 - (2) the activity must be sponsored by an in-state or out-of-state institution of higher education, or an out-of-state regional or national association, or the state or federal government;
 - (3) the activity must be in an area directly related to the activities of a commercial, noncommercial or private applicator;
 - (4) the applicator shall provide the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of the sponsor, the instructor's name and address, proof of attendance, and date, time, and place of the activity; and
 - (5) the information for the desired credit must be submitted within 60 days after completion of the activity.
- (y) An applicator may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension may be granted by the department if the applicator files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause means illness, extended medical disability, military deployment, or other extraordinary hardship which is beyond the control of the person seeking the extension.
- (z) Applicators licensed as both private and commercial or noncommercial may satisfy requirements for private applicator recertification by meeting the recertification requirements for commercial and noncommercial applicators.

Source Note: The provisions of this §7.24 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective November 2, 2005, 30 TexReg 7035; amended to be effective May 4, 2008, 33 TexReg 3569; amended to be effective February 17, 2015, 40 TexReg 687; amended to be effective January 1, 2016, 40 TexReg 9615; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.25 Expiration and Renewal of Licenses

- (a) A licensee who fails to file a complete application for renewal on or before the license expiration date must pay a late fee as prescribed by the Code, Chapter 12.
- (b) The license of a person who fails to timely file a complete application for renewal is invalid until a completed application and any required late fee has been received by the department. A person who applies a restricted-use or state-limited-use pesticide or regulated herbicide during a period when the person's license is invalid may be assessed administrative penalties in addition to any required late fee.

- (c) If a complete application for renewal of a commercial, noncommercial or private applicator's license is not submitted within one year after the expiration of the license, the license will be deemed to be terminated voluntarily and a renewal application will not be accepted. Before being licensed again, the applicator must meet the requirements for a new license.
- (d) Pursuant to the Act, §76.113, the head of the licensing agency in determining whether additional training shall be required of current licensees before renewal of their applicator license may consider changes in technology, pesticide related problems, or the performance of individual applicators. If general retraining and/or retesting is required for all applicators in a category or subcategory, the licensing agency will publish notice at least six months in advance of the license renewal date. If individual retraining and/or retesting is required as a result of the applicator's performance, the agency may give notification and set a time and place of retraining that would be in the best interest of public health and environmental protection.
- (e) Military service members or military veterans as defined in Texas Occupations Code, Chapter 55, will be credited with experience equivalent to the pre-license requirements of §7.21(b)(4)(A) - (F) of this chapter (relating to Applicator Certification).
- (f) License applications of military spouses, as defined in Texas Occupations Code, Chapter 55, shall be processed on an expedited basis.
- (g) If a qualified military spouse applicant holds a current license issued by another jurisdiction and licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of the department, the department shall issue the applicant a license. For purposes of this subsection, substantially equivalent means:
 - (1) the requirements of the other jurisdiction require written, proctored examinations for initial certification for the same type of pesticide applicator license being requested;
 - (2) the other jurisdiction has a state pesticide plan approved by the EPA; and
 - (3) the department has a current reciprocal agreement with the issuing jurisdiction for pesticide licensing.

Source Note: The provisions of this §7.25 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective January 29, 2014, 39 TexReg 396; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.26 State Plan for Certification of Applicators

The department hereby adopts by reference the State of Texas Plan for Certification of Pesticide Applicators with appendices submitted by the department to the administrator of the EPA pursuant to the requirements of 7 United States Code, §136i. A copy of the plan may be obtained upon request from the department.

Source Note: The provisions of this §7.26 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.27 Applicator Business Registration and Vehicle Identification for Applicator Businesses

- (a) Each applicator business shall register with, and obtain a registration number from the department.
- (b) An applicator business vehicle identification decal, issued and provided by the department, shall be prominently affixed to each motor vehicle used by any applicator business that makes applications in the subcategory landscape maintenance of the lawn and ornamental pest control license use category, category 3(A) in §7.21 of this subchapter (relating to Applicator Certification).

- (c) The term "prominently affix" as used in this section means permanently affixed to the rear window, front fender, or front door panel of the vehicle in a location readily accessible to and viewable by members of the public and department personnel.
- (d) The term "motor vehicle" as used in this section means any wheeled or tracked vehicle, machine, tractor, trailer, or semitrailer, but not aircraft, propelled or drawn by mechanical power and used to transport a person or thing.
- (e) A motor vehicle is not required to have the decal specified by subsection (b) of this section affixed to it if the vehicle is attached to, pulled by, or transported by another motor vehicle with a required decal affixed.
- (f) A motor vehicle is required to have the decal specified by subsection (b) of this section affixed to it only when the activities in subsection (b) of this section are related to a category 3A application.
- (g) The decal required by subsection (b) of this section may be obtained by submitting a request to the department on a form prescribed by the department.

Source Note: The provisions of this §7.27 adopted to be effective February 9, 2005, 30 TexReg 544; amended to be effective February 17, 2015, 40 TexReg 687

Subchapter D Use And Application

RULE §7.30 Classification of Pesticides

- (a) State-Limited-Use Pesticides Defined by Active Ingredient.
 - (1) Except as provided by paragraphs (3) - (4) of this subsection and because of their high potential to cause adverse effects to non-target sites, a pesticide product containing an active ingredient in the following list is classified as a state-limited-use pesticide and subject to the restrictions listed in paragraph (5) of this subsection, as well as all other provisions of law generally applicable to state-limited-use pesticides.
 - (A) 2,4-Dichlorophenoxyacetic acid (2,4-D); including acid, amine, choline, ester, and salt formulations;
 - (B) 2,4-Dichlorophenoxy butyric acid (2,4-DB);
 - (C) 2,4-Dichlorophenoxy propionic acid (2,4-DP);
 - (D) 2-Methyl-4-Chlorophenoxyacetic acid (MCPA);
 - (E) 3,6-Dichloro-o-anisic acid (dicamba); including dimethylamine salt (DMA), sodium salt, diglycoamine salt (DGA), isopropylamine salts (IPA), N, N-Bis-(3-aminopropyl) methylamine (BAPMA), and potassium salt;
 - (F) 3,4-Dichloropropionanilide (propanil);
 - (G) 5-bromo-3-sec-butyl-6-methyluracil (bromacil);
 - (H) 2,4-bis(isopropylamino)-6-methoxy-s-triazine (prometon);
 - (I) 3,7-dichloro-8-quinolinecarboxylic acid (quinclorac);
 - (J) Sodium fluoroacetate (Compound 1080); and
 - (K) Sodium cyanide (M44).
 - (2) Regulated Herbicides.
 - (A) 2,4-dichlorophenoxyacetic acid (2,4-D) including acid, amine, choline, ester, and salt formulations;

- (B) 2-methyl-4-chlorophenoxyacetic acid (MCPA);
 - (C) 3,6-dichloro-o-anisic acid (dicamba); including dimethylamine salt (DMA), sodium salt, diglycoamine salt (DGA), isopropylamine salts (IPA), N, N-Bis-(3-aminopropyl) methylamine (BAPMA), and potassium salt; and
 - (D) 3,7-dichloro-8-quinolinecarboxylic acid (quinclorac).
- (3) Exceptions from Regulated Herbicide Classification.
- (A) 2,4-dichlorophenoxyacetic acid (2,4-D) or 3,6-Dichloro-o-anisic acid dicamba when used in accordance with the approved product label for transgenic auxin herbicide tolerant crops; and
 - (B) applied by ground application equipment only; and
 - (C) applied when winds do not exceed 10 miles per hour.
- (4) A pesticide product containing an active ingredient listed in this subsection is exempt from classification as a state-limited-use pesticide or a regulated herbicide under this subsection if the product:
- (A) is distributed in a container with a capacity less than or equal to one quart for liquid products or less than or equal to two pounds for dry or solid products;
 - (B) is a specialty fertilizer mixture labeled for ornamental use and registered as a commercial fertilizer under Chapter 63 of the Code; or
 - (C) is ready for use, requires no further mixing or dilution before use, and is packaged in a container of one gallon or less for liquid products or four pounds or less for dry or solid products.
- (5) The following are restrictions on use and distribution of state-limited-use pesticides and regulated herbicides:
- (A) A person may not purchase or use a pesticide classified as a state-limited-use pesticide or as a regulated herbicide under this subsection unless the person is licensed as a pesticide applicator under either the Act or working under the direct supervision of a person so licensed, or Chapter 1951 of the Texas Occupations Code.
 - (B) A person may not distribute a pesticide classified as state-limited-use or as a regulated herbicide under this subsection to a person not authorized by this section to purchase state-limited-use pesticide or a regulated herbicide.
 - (C) A person may not apply 2,4-dichlorophenoxyacetic acid (2,4-D) on a transgenic auxin herbicide tolerant crop unless the person has attended an auxin training course approved by the department prior to application.
 - (i) One (1) 2,4-D continuing education unit (CEU) shall be required annually and is valid for one year from the date of course attendance.
 - (ii) Courses shall be approved by the department and may not be less than 50 minutes in length for each active ingredient. No more than one (1) CEU will be assigned for any 50 minutes of actual instruction time in Laws and Regulations as described in §7.24 of this chapter (relating to Applicator Recertification).
 - (iii) Each course shall include topics on: application timing, nozzle requirements/selection, wind speed, ground speed, boom height, tank cleanout, sensitive crops, buffer zone requirements, weather conditions, drift, volatility, and inversion.

- (D) A person may not apply 3,6-Dichloro-o-anisic acid (dicamba) on a transgenic auxin herbicide tolerant crop unless the person has attended an auxin training course approved by the department prior to application.
- (i) One (1) dicamba continuing education unit (CEU) shall be required annually and is valid for one year from the date of course attendance.
 - (ii) Courses shall be approved by the department and may not be less than 50 minutes in length for each active ingredient. No more than one (1) CEU will be assigned for any 50 minutes of actual instruction time in Laws and Regulations as described in §7.24 of this chapter.
 - (iii) Each course shall include topics on: application timing, nozzle requirements/selection, wind speed, ground speed, boom height, tank cleanout, sensitive crops, buffer zone requirements, weather conditions, drift, volatility, and inversion.
- (b) State-Limited-Use Pesticides Defined by Use.
- (1) Due to the high potential for adverse effects to humans, animals, or the environment and as result of wide area public health pest control, a pesticide product otherwise classified as general use is classified as a state-limited-use pesticide when, and only when, applications are made by aerial application or with power-driven fogging equipment for the purpose of public health pest control.
 - (2) A person may not use a pesticide for public health pest control in methods identified in paragraph (1) of this subsection unless the person is licensed as a pesticide applicator under the Act and certified in the public health pest control category as described in §7.21 of this chapter (relating to Applicator Certification) or is working under the direct supervision of a person so licensed and is employed either by a state, county, city, or other local governmental body or is a person authorized to perform public health pest control under a contract between a state, county, city, or other local governmental body and the person or the person's employer.
- (c) Prohibited Pesticides.
- (1) Because of their persistence in the environment and bioaccumulative toxic effects, any product or substance in the following list or containing as an active ingredient a product or substance in the following list is a prohibited pesticide and subject to the prohibitions, restrictions, and requirements of paragraphs (2) and (3) of this subsection:
 - (A) Aldrin;
 - (B) Chlordane;
 - (C) DDT (dichlorodiphenyltrichloroethane);
 - (D) DDD (dichlorodiphenyldichloroethylene);
 - (E) Dieldrin;
 - (F) Hexachlorobenzene;
 - (G) All mercury-based pesticides;
 - (H) Mirex;
 - (I) Toxaphene;
 - (J) Heptachlor;
 - (K) 2,4,5-trichlorophenoxyacetic acid (2,4,5-T); and
 - (L) 2,4,5-trichlorophenoxypropionic acid (2,4,5-TP (Silvex)).
 - (2) No person shall use a prohibited pesticide for any purpose.

- (3) A person in possession of a prohibited pesticide shall by proper storage, care, handling, and transport prevent the release of the prohibited pesticide into the environment, prevent exposure of human beings or other susceptible species to the prohibited pesticide, and dispose of the prohibited pesticide in accordance with all provisions of state and federal law.
- (d) State-Limited-Use Pesticides Defined by Active Ingredient and Use.
 - (1) A pesticide product containing the active ingredient warfarin when used only as a feral hog (*Sus scrofa*) toxicant is classified as a state-limited-use and subject to the restrictions listed in paragraph (2) of this subsection, as well as all other provisions of law generally applicable to state-limited-use pesticides.
 - (2) Restrictions.
 - (A) A person may not purchase a pesticide classified as state-limited-use under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Texas Agriculture Code or Chapter 1951 of the Texas Occupations Code or working under the direct supervision of a person so licensed.
 - (B) A person may not use a pesticide classified as state-limited-use under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Texas Agriculture Code or Chapter 1951 of the Texas Occupations Code or working under the direct supervision of a person so licensed.
 - (C) A person may not distribute a pesticide classified as state-limited-use under this subsection to a person not authorized by this section to purchase state-limited-use pesticide.

Source Note: The provisions of this §7.30 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective February 17, 2015, 40 TexReg 687; amended to be effective December 21, 2015, 40 TexReg 9115; amended to be effective March 24, 2019, 44 TexReg 1437; amended to be effective March 9, 2023, 48 TexReg 1286; amended to be effective January 31, 2024, 49 TexReg 419

RULE §7.31 Supervision

- (a) If there is a discrepancy between supervision requirements contained in federal laws or regulations, state laws or regulations, or the pesticide label, the supervision requirement that requires the greatest degree of direct supervision by the licensed applicator shall apply. Licensed applicators may only supervise application of pesticides for categories or subcategories in which they are certified.
- (b) A person may not supervise the use of a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is licensed as a commercial, non-commercial, or private applicator with the department. A certified private applicator may not supervise the use of restricted-use or state-limited-use pesticides or regulated herbicides. A licensed applicator may not supervise an applicator whose license or certificate is under revocation or suspension.
- (c) A business that applies a restricted-use or state-limited-use pesticide or regulated herbicide to the land of another for hire must be operated by or employ a licensed commercial applicator. An application of a restricted-use or state-limited-use pesticide or regulated herbicide can only be made by the licensed applicator or by persons under the licensee's direct supervision.
- (d) A licensed applicator is not required to be physically present at the time and place of the application of a restricted-use or state-limited-use pesticide or regulated herbicide to exercise direct supervision unless the label of the applied pesticide states that the presence of the licensed applicator is required. The licensed applicator must always be available when and if needed and is responsible for any actions of a person working under the licensee's direct supervision.

- (e) Except as provided in subsection (f) of this section, each licensed applicator is responsible for assuring that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual. Working includes transporting a restricted-use or state-limited-use pesticide or regulated herbicide in any type of distributing or transporting equipment ready for application; mixing, storing and handling in packages or containers that have been opened; and applying and disposing of restricted-use or state-limited-use pesticides or regulated herbicides and cleaning equipment used to apply the pesticide. At a minimum, instructions shall include a review of appropriate sections of the Act and related regulations, and reading of complete labeling information for the particular use of the pesticide product being applied. To ensure that appropriate instructions have been given to a nonlicensed person, the licensed applicator must verify or provide handler training to the nonlicensed applicator in accordance with the requirements of WPS. Licensed applicators supervising individuals applying products not under the scope of WPS must review the label with the individual and have the individual sign and date the label or complete a form prescribed by the department.
- (f) Licensed applicators employed by political subdivisions or cemeteries who supervise nonlicensed employees that make any pesticide application are responsible for assuring that the following requirements are met:
 - (1) On an annual basis and prior to the nonlicensed employee making a first application, the nonlicensed employee must be trained in the specific use of the pesticide applied. The training requirement may be satisfied by either:
 - (A) the nonlicensed employee obtaining five CEUs in accordance with the continuing education required for licensed commercial and noncommercial applicators pursuant to §7.24 of this chapter (relating to Applicator Recertification); or
 - (B) the nonlicensed employee receiving training on the appropriate laws and regulations pertaining to pesticide use, the label information for the use of all pesticides that are applied, and pesticide safety training.
 - (2) A record of training received or CEUs obtained by the nonlicensed employee must be maintained for a period of two years and shall be made available to the department for inspection upon request. The record may be either a certificate of completion of training or CEUs obtained or on a form prescribed by the department.
- (g) Both the supervising licensed commercial or noncommercial applicator and the person under the direct supervision of the licensed commercial or noncommercial applicator must perform applications from the same local office, unless the supervising licensed commercial or noncommercial applicator is physically present during the application.
- (h) A licensed private applicator may supervise the use of a restricted-use or state-limited-use pesticide or a regulated herbicide by a nonlicensed person on the property owned or controlled by the nonlicensed person, in accordance with the provisions of the Act, §76.112(a)(2), and subsection (e) of this section, and provided the licensed private applicator maintains a record of the application and also provides a record of the application to the nonlicensed person.
- (i) A veterinarian licensed by the State Board of Veterinary Medical Examiners may supervise a nonlicensed person's use of a restricted-use or state-limited-use pesticide or regulated herbicide in the course of the veterinarian's normal practice, provided the veterinarian affords the nonlicensed person training in accordance with subsection (e) of this section.

Source Note: The provisions of this §7.31 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.32 Records of Distribution

- (a) A person required to be licensed as a pesticide dealer by the Act, §76.071, shall maintain a record of each distribution of a restricted-use pesticide, state-limited-use pesticide, or regulated herbicide for a period of two years.
- (b) The record of each distribution required to be kept by this section shall be kept separate from the person's other business records and shall contain:
 - (1) the name, address, applicator license or certificate number, dealer license number, or veterinary license number of the person to whom the pesticide is distributed;
 - (2) the date of the distribution;
 - (3) the brand name and the EPA registration number of the pesticide distributed;
 - (4) the quantity of the pesticide distributed;
 - (5) the name and address of any person who took delivery of the pesticide on behalf of, and acting under the authorization of the responsible licensed or certified applicator, including distributions to any entity on behalf of a Texas-licensed pesticide dealer.
 - (6) if a pesticide that has been classified as a state-limited-use pesticide or a regulated herbicide but not a restricted-use pesticide under FIFRA is made available to an unlicensed person that resides out-of-state, and the person does not intend to use the pesticide in this state, the name and out-of-state address of the person. If the person holds a valid applicator license issued by another state or federal agency, the dealer must record that license number and the state or federal agency that issued the license.
- (c) Records of distribution shall be kept current and maintained at the place of business where distribution occurs as designated on the pesticide dealer's license.
- (d) Records of distribution shall be made available for inspection by the department immediately upon request at any time during normal business hours.
- (e) Copies of records of distribution must be submitted to the department within the time period specified in a written request by the department.
- (f) Out-of-state licensed dealers who do not operate a physical distribution location in the state will be required to submit to the department on a quarterly reporting period (January-March, April-June, July-September, October-December), a complete record of all restricted-use or state-limited-use pesticides or regulated herbicides distributed into the state during the prior quarterly reporting period. Reports must be submitted to the department no later than 15 days after each reporting period. If no such distributions were made in a quarterly reporting period, the dealer shall submit a letter to the department no later than 15 days after the ending day of that reporting period stating that no such distributions were made. Forms for submitting distribution records under this subsection may be obtained from the department. If the department form is not used, the form submitted must contain all the information required by this section.
- (g) All licensed pesticide dealers shall maintain a list of poison control centers in the state or other sources of contact designed to provide medical assistance in emergencies involving pesticide poisoning.

Source Note: The provisions of this §7.32 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective February 17, 2015, 40 TexReg 687; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.33 Records of Application

- (a) The following records of pesticide use shall be maintained for a period of two years:
- (1) A person required by the Act to be licensed as a commercial applicator or a noncommercial applicator shall maintain records of each pesticide application regardless of the use classification of the pesticide applied.
 - (2) A person licensed or certified as a private applicator or licensed as a veterinarian shall maintain records of each application of a restricted-use pesticide, state-limited-use pesticide, or regulated herbicide.
- (b) The record of each pesticide use required by this section shall contain:
- (1) the date of the application;
 - (2) the beginning time for the application;
 - (3) the name of the person for whom the application was made;
 - (4) the location of the land where the application was made stated in a manner that would permit inspection by an authorized party;
 - (5) for each pesticide applied:
 - (A) the product name;
 - (B) the product EPA registration number;
 - (C) the rate of product per unit;
 - (D) the total volume of spray mix, dust, granules, or other materials applied per unit; and
 - (E) the name of the pest for which the product was used;
 - (6) the site treated (e.g., name of crop, kind of animal, etc.);
 - (7) total acres or volume of area treated (e.g., acre, square feet, number of head, etc.);
 - (8) wind direction and velocity except for those applications made indoors or otherwise within a structure;
 - (9) air temperature;
 - (10) application method or type of equipment used to make the application;
 - (11) the FAA "N" number for aerial application equipment;
 - (12) the name and department pesticide license number of the applicator responsible for the application and, if different, the name of the person actually making the application;
 - (13) the spray permit number for regulated herbicides applied in a regulated county; and
 - (14) Documentation to verify training of persons working under the supervision of a licensed pesticide applicator as required by §7.31 of this chapter (relating to Supervision).
- (c) If several applications are made from a single load of pesticide to sites in close proximity, a single beginning time may be given for all the applications, but the sequence of applications must be specified by appropriately ordering the applications by person for whom the application was made and by the location of the land where the application was made.
- (d) The record of each pesticide application shall be kept current and maintained at the applicator's principal place of business as designated on the applicator's application/renewal for a pesticide applicator's license.
- (e) The record of each pesticide application shall be legible and in a format that clearly identifies and sets forth each specific item of information required by this section.
- (f) The department may exempt specific record items, which may not be applicable to a type of application upon written request and written approval. The person responsible for keeping records under this section shall maintain a copy of the department's written approval for a record exemption as part of the application recordkeeping requirements of this section.

- (g) Records of application shall be made available for inspection to the department immediately upon request at any time during normal business hours and shall contain all the information required by this section except as exempted in writing under subsection (f) of this section. The department's written approval for any record exemption shall be made available to the department representative conducting the records inspection at the time of the inspection.
- (h) Copies of records of application must be submitted to the department within the time period specified in a written request by the department and must contain all of the information required by this section except as exempted in writing under subsection (f) of this section. A copy of the department's written approval for any record exemption shall accompany the copies of records submitted under this subsection.

Source Note: The provisions of this §7.33 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective February 17, 2015, 40 TexReg 687; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.34 Storage and Disposal of Pesticides

- (a) No person may dispose of, discard, or store any pesticide or pesticide container in a manner that may cause or result in injury to humans, vegetation, crops, livestock, wildlife, pollinating insects, or pollution of any water supply or waterway.
- (b) Pesticides intended for distribution or sale must be displayed or stored within an enclosed building or fenced area, and may not be displayed on sidewalks, parking lots, or similar open areas without surveillance.
- (c) Bulk storage tanks, when not enclosed in a secured fenced area or a building, must have a lock on the dispensing device.
- (d) Pesticides in leaking, broken, corroded, or otherwise unsafe containers, or with illegible labels shall not be displayed or offered for sale. Such containers shall be removed from display areas and segregated from other pesticides for distribution to prevent environmental contamination or health and safety hazards prior to proper disposal or return to manufacturer.
- (e) Pesticide containers, concentrates, spray mixes, container rinsates, and/or spray system rinsates that are to be discarded shall be disposed of in accordance with pesticide label directions and in accordance with the provisions of the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361.
- (f) The applicator, the owner of the pesticide, and/or the person in control of the mixing site shall be jointly and severally liable for proper storage and disposal of pesticide containers and contents.

Source Note: The provisions of this §7.34 adopted to be effective December 4, 1997, 22 TexReg 11652.

RULE §7.35 Registration and Inspection of Equipment

All application equipment used for pesticide applications is subject to inspection by the department at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the inspector finds that it is not, the department shall require the needed repairs or adjustments before allowing the use of such equipment.

Source Note: The provisions of this §7.35 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective November 2, 2005, 30 TexReg 7035; amended to be effective February 17, 2015, 40 TexReg 687

RULE §7.36 Application of Worker Protection Standard

- (a) Workers and handlers must be trained in accordance with WPS.

- (b) All certified and licensed applicators or trained trainers who conduct WPS pesticide safety training must:
- (1) maintain records of each trainee for five years. These records must include a copy of each dated class roster signed by the trainer and each trainee;
 - (2) issue a copy of an EPA training roster only to trainee who has been trained in accordance with WPS requirements;
 - (3) record trainee information on the training rosters in ink or other indelible form;
 - (4) on request, issue copies of training rosters that match EPA specifications or that comply with state variations from such specifications that have prior approval from EPA; and
 - (5) promptly respond to requests from EPA, state, or tribal agencies or agricultural employers for information concerning issued EPA training rosters.
- (c) The EPA WPS warning flag/sign referred to in WPS and §7.37 of this chapter (relating to Notification Requirements) must look like the one pictured as follows. Additional information may be included on the warning sign, such as the name of the pesticide or the date of application, if it does not lessen the impact of the flag/sign or change the meaning of the required information. If the required information is added in other languages, the words must be translated correctly. The flag/sign must be at least 14 inches by 16 inches, and the letters must be at least one inch high. For nursery and greenhouse operations, the warning sign/flag may meet the minimum requirements as approved by the EPA.



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Source Note: The provisions of this §7.36 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.37 Prior Notification Requirements

- (a) Except as provided in subsection (n) of this section, the farm operator shall be responsible for meeting prior notification requirements. Responsibility may be transferred by contract to a second party. However, if the effective date of the transfer is unclear, both the farm operator and the second party may be held liable for any violation of these regulations.
- (b) All applications of pesticides by ground application equipment, except airblast or mistblowing equipment, are exempted from this section.
- (c) The following persons may request prior notification of a pesticide application:
- (1) any person who works or resides in a building, house, or other structure located on land adjoining and within 1/4 mile of a field on which pesticides may be applied;
 - (2) persons in charge of licensed day-care centers, primary and secondary schools, hospitals, inpatient clinics, or nursing homes within 1/4 mile of the field on which pesticides are to be applied. The parent of a primary or secondary school student may for good cause request notification from the department if the person in charge of the school has refused to request notification. If the department determines that notification should be given, the department shall notify the farm operator to give notification to the person in charge of the school; and
 - (3) any person with chemical hypersensitivities, allergies, or other medical conditions which may be aggravated by pesticide exposure and whose residence or place of employment is within 1/4 mile of the field on which pesticides are to be applied.

- (d) Except as provided in subsection (n) of this section, requests for prior notification under this section shall be made in writing to the farm operator, and should include:
- (1) the name and address of the person making the request;
 - (2) one home and business telephone number at which the person making the request can be reached and the hours that such person is normally at each number;
 - (3) the date of the request;
 - (4) the location of the field for which the request for notification is being made;
 - (5) a request to be notified prior to the application of any pesticides to the area described in paragraph (4) of this subsection or the trade name and/or common chemical name of specific pesticides for which prior notification is requested; and
 - (6) a request to be notified because of a medical condition that may be aggravated by pesticide exposure. Such requests must contain a licensed physician's signed confirmation of the medical condition.
- (e) Requests for prior notification should be sent by certified mail. It shall be the responsibility of the person making the request to retain copies of the request and the return receipts of certified letters.
- (f) A request for prior notification shall be effective through December 31 of the year that the request is received. A farm operator shall commence notifying a requesting party of scheduled pesticide applications within ten days of receipt of a request for notification. The department may extend the time to begin notifying a requesting party upon a showing of sufficient cause by the farm operator. The department shall notify the requesting party of any such extension.
- (g) The following methods may be used for giving notification of a scheduled pesticide application:
- (1) Except as provided by subsection (n) of this section if the request for notification is made pursuant to this section, the notification may be made by:
 - (A) raising a flag/sign;
 - (i) The EPA WPS warning flag/sign as shown in §7.36 of this chapter (relating to Application of Worker Protection Standard) shall be raised to a height of at least approximately five feet, with the bottom of such flag/sign always at least two feet above the top of the crop, in or about the field to which pesticide are scheduled to be applied so that the flag/sign is located no farther than 650 yards from the nearest property line of any person requesting notification.
 - (ii) In the event of unusually tall crops, such as citrus, corn, or sugar cane, or limited access fields, the farm operator may raise a flag/sign at a distance greater than 650 yards from the nearest property line of the party requesting notification on a permanent pole to a height visible from the property line of the requesting party.
 - (iii) The telephone number of the farm operator shall be on or near the flag/sign, and the flag/sign shall be raised on the border of the field at a location to which the public has access for the purpose of reading the telephone number. The farm operator shall provide the name of the pesticide and the intended date and approximate time of the scheduled application when requested by the requesting party;
 - (B) giving notification in writing, in person, or by telephone in English or, when appropriate, Spanish; or
 - (C) other means mutually agreed upon by both parties. This agreement must be in writing and a copy filed with the department.
 - (2) If the request for notification is made pursuant to a medical condition, notification must be given in person or by telephone in English or, when appropriate, Spanish.

- (A) If the farm operator is unable to reach a person entitled to notification under this paragraph after making reasonable efforts, the farm operator may immediately notify the department by telephone of the following information:
 - (i) the name and telephone number(s) of the farm operator;
 - (ii) the name and telephone number(s) of the requesting party;
 - (iii) the location of the field scheduled to be treated;
 - (iv) the intended date and approximate time of the pesticide application; and
 - (v) the trade and common chemical name of the pesticide.
 - (B) the department shall maintain a record of the information provided by the farm operator for the duration of the notification request.
 - (C) If the farm operator telephones the department between 8:00 a.m. and 5:00 p.m., Monday through Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempts shall be maintained by the department for the duration of the notification request.
- (3) If the request for notification is made pursuant to subsection (c)(2) of this section, notification may be given in person or by telephone in English or, when appropriate, Spanish. Alternatively, if mutually agreed by the farm operator and the person in charge of any such facility, notification may be given by posting a flag/sign at a designated location.
 - (4) No request is necessary for prior notification of camps owned, managed, or controlled by the farm operator and located on the field or licensed farm labor camps located on the field or within 1/4 mile of the field on which pesticides are to be applied. Notification shall be provided by telephone or in person to the head of each household. Alternatively, the farm operator may provide notification in writing by placing a written notice on a bulletin board to which the camp has access.
 - (5) A farm operator may notify the department that the farm operator has given or been unable to give a notification by telephone or in person to establish a record of such notice. The department shall maintain a record of such notifications. It is a violation of this section to provide false information to the department about efforts to reach a requesting party or about failure to receive such notification.
- (h) Notice given in writing, in person, or by telephone shall include:
 - (1) the intended date and approximate time of application;
 - (2) the trade and common chemical name, if requested, of the pesticide to be applied; and
 - (3) the location of the field on which the application is to be made.
 - (i) Notice shall be given not later than 24 hours prior to a scheduled pesticide application.
 - (1) Notice shall be deemed given pursuant to subsection (g)(1) and (3) of this section.
 - (A) at the time of delivery of notification to the requesting person or at the time of delivery of notification to the address provided in the request for prior notification;
 - (B) when the required flag/sign is raised; or
 - (C) as mutually agreed upon pursuant to an agreement authorized by subsection (g)(1)(C) of this section.
 - (2) Notice shall be deemed given pursuant to subsection (g)(4) of this section:
 - (A) at the time of delivery of notification in person or by telephone; or
 - (B) after the farm operator has made reasonable efforts to notify the requesting party by telephoning the requesting party at the number(s) provided during the time(s) specified in the written request.

- (j) In the event an immediate application is required and notice cannot be given as required by subsection (i) of this section, such notice need not be given. Notice of an emergency application shall be given:
- (1) by the method selected pursuant to subsections (g)(1), (3) and (4) of this section as soon as reasonably possible before the application; or
 - (2) by telephone or in person to medically affected persons as soon as reasonably possible before the application. In no event shall notice of an emergency application to medically affected persons be given less than one hour before the scheduled application. However, an emergency application need not be postponed if after reasonable efforts by the farm operator actual notice cannot be given.
- (k) Flags/signs raised under this section should be removed or lowered within 24 hours after the reentry interval expires. However, in no event shall such flags/signs be left posted for more than 72 hours after the reentry interval has expired. In the event that a pesticide application is not made when scheduled, the flag/sign may be left posted until after the reentry interval has expired.
- (l) A person who has requested notice of a pesticide application under this section shall notify the farm operator promptly and in writing of any change of address or telephone number. Notice need not be given at any vacant structure or premises, or at any structure or premises which is not the place of residence or business of a person entitled to notice under this section.
- (m) All complaints filed under this section shall be reviewed and investigated by the department in the same manner as any other complaints filed under this chapter.
- (n) The Texas Boll Weevil Eradication Foundation (foundation) or other areawide pest control programs sponsored by a governmental entity must adhere to the following:
- (1) For applications made by the foundation as part of its boll weevil eradication program or other areawide pest control program sponsored by a governmental entity, the entity making the application or causing the application to be made is responsible for meeting prior notification requirements of this subsection. The farm operator is responsible for accepting requests for and providing prior notification in accordance with this section for applications made by the farm operator.
 - (2) A request for notification of an application made by an entity covered by this subsection may be made by those persons listed in subsection (c) of this section. No request is necessary for prior notification of farm labor camps owned, managed, or controlled by a farm operator and located on or within 1/4 mile of a field on which pesticides are to be applied by the foundation or other entity; provided that the farm operator is responsible for notifying the foundation or other entity of the presence of such labor camps.
 - (3) Requests made under this section shall be made in writing to the foundation or other entity or the farm operator and shall include the information required by subsection (d) of this section.
 - (4) The farm operator is responsible for notifying the foundation or other entity covered by this subsection of any requests for prior notification received by the farm operator relating to an application that will be made or caused to be made by the foundation or other entity. The information must be provided to the foundation or other entity within 24 hours of its receipt by the farm operator. The information may be provided:
 - (A) by telephone at a telephone number obtained from the department;
 - (B) by mailing the written request to the foundation or other entity at an address obtained from the department; or
 - (C) by any other reasonable means, as long as the information is forwarded within 24 hours of its receipt.
 - (5) Prior to the making of the first application in each calendar year, the foundation or other entity shall request that the farm operator notify it of any requests for prior notification already in effect for property on which the foundation or other entity will be making applications and of

any future requests for prior notification on that property.

- (6) A request for prior notification under this subsection shall be in effect through December 31 of the year that the request is received. The foundation or other entity shall begin notifying the requesting party of scheduled pesticide applications within 10 days of receipt of a request for notification.
- (A) Notification shall be provided as follows:
- (i) Notification may be given in writing, by raising a flag/sign in the manner provided in subsection (g)(1)(A) of this section, in person, by telephone in English or, when appropriate, Spanish, or by other means mutually agreed upon by the requesting party and the foundation or other entity. This agreement must be in writing and a copy filed with the department. For purposes of providing notice to medically affected persons or to licensed day care centers, primary and secondary schools, hospitals, inpatient clinics, and nursing homes, "notification in writing" means other than by mail such as by posting a written notice on the requester's front door or at the requester's place of business.
 - (ii) If the foundation or other entity is unable to reach a person entitled to notification under this section after making reasonable efforts, it may immediately notify the department by telephone of the following information:
 - (I) the name and telephone number(s) of the foundation or other entity;
 - (II) the name and telephone number(s) of the requesting party;
 - (III) the location of the field scheduled to be treated;
 - (IV) the intended date and approximate time of the pesticide application; and
 - (V) the trade and common chemical name of the pesticide.
 - (iii) The department shall maintain a record of the information provided by the foundation or other entity for the duration of the notification request.
 - (iv) If the foundation or other entity telephones the department between 8:00 a.m. and 5:00 p.m., Monday through Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempts shall be maintained by the department for the duration of the notification request.
 - (v) In addition to the methods of notification provided at this subparagraph, notification to farm labor camps may be provided in writing by placing a written notice on an on-site bulletin board or other central, on-site posting place which is readily accessible to labor camp residents.
- (B) The notice shall include:
- (i) the location of the field on which the application is to be made;
 - (ii) the intended date and approximate time of application;
 - (iii) the trade and common chemical name of the pesticide to be applied; and
 - (iv) who to contact for additional information.
- (7) Notice shall be given no later than 24 hours prior to a scheduled pesticide application.
- (8) Notice need not be given in accordance with paragraph (7) of this subsection when an immediate application is required and time does not reasonably allow the giving of such notice. In this event, notice of an immediate emergency application shall be given:

- (A) by the method selected in accordance with paragraph (6)(A) of this subsection as soon as reasonably possible before the application; or
 - (B) by telephone or in person to a medically-affected person as soon as reasonably possible, but not less than one hour before the application. However, an immediate emergency application need not be postponed if, after reasonable efforts by the foundation or other entity, actual notice cannot be given.
- (9) A person who has requested notice of a pesticide application under this section shall notify the foundation or other entity promptly and in writing of any change of address or telephone number.

Source Note: The provisions of this §7.37 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.38 Forbidden Pesticide Practices

- (a) The pesticide applicator shall be responsible for complying with the following standards:
 - (1) Pesticides may not be applied if persons not involved with the application of the pesticide are lawfully present in the area to be treated.
 - (2) The applicator shall stop the application of a pesticide if any person not wearing appropriate protective clothing lawfully enters the area to be treated.
- (b) It is a violation of these regulations for any person employed by a farm operator to knowingly enter an area to which pesticides have been applied and the restricted-entry interval has not expired or to which pesticides are being applied, except as permitted by the label or federal WPS.

Source Note: The provisions of this §7.38 adopted to be effective December 4, 1997, 22 TexReg 11652.

RULE §7.39 Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar (LPC)—State-Limited-Use Requirements

- (a) Any and all pesticides and devices using the active ingredient sodium fluoroacetate for livestock predation control shall be classified as state-limited-use, pursuant to the Act, §76.003.
- (b) In addition to the definitions set out in the Act, §76.001, and §7.1 of this chapter (relating to Definitions), the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) **LPC applicator**—A person who has obtained a license from the department as a private, commercial, or noncommercial applicator or who has obtained a private applicator certificate and has fulfilled the requirements for livestock protection collar certification as set forth in this section. Private applicators may certify to use the livestock protection collar on property owned, leased, or rented by the person or the person's employer or under the person's general control. Employees of government agencies who apply collars in administration of official duties or persons that apply collars on their own or employer's property may obtain a livestock protection collar certification under a noncommercial license. Persons operating a business or employed by a business to apply livestock protection collars on the property of another for hire must obtain livestock protection collar certification under a commercial applicator license.
 - (2) **Livestock protection collar (LPC)**—A collar-like device which has been filled with the active ingredient sodium fluoroacetate (Compound 1080) to control predation.
 - (3) **Registrant agent**—A representative of a registrant. Each registrant agent must be a licensed pesticide dealer or a licensed private, commercial, or noncommercial applicator certified in the livestock protection collar subcategory, and approved by the department to distribute livestock protection collars to approved LPC applicators.

- (4) Collar pool agent—A person designated by the department to operate a livestock protection collar pool. Each collar pool agent must be a licensed pesticide dealer or county extension agent, a certified private applicator certified in the livestock protection collar subcategory, or a licensed private, commercial, or noncommercial applicator certified in the livestock protection collar subcategory and approved by the department to distribute livestock protection collars to approved LPC applicators.
- (c) Distribution requirements Registrants, registrant agents, and collar pool agents distributing livestock protection collars must meet the following requirements.
- (1) Each registrant must obtain a license under the Act, §76.071, and comply with the provisions of §7.20 of this chapter (relating to Application).
 - (2) Each registrant and registrant agent who distributes livestock protection collars must obtain a license as a private, commercial, or noncommercial applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Each collar pool agent who distributes livestock protection collars must possess a private applicator certification and obtain certification in the livestock protection collar subcategory or obtain a license as a private, commercial, or noncommercial applicator with certification in the livestock protection collar subcategory and, except for county extension agents, a pesticide dealer license. Collars shall be distributed only by registrants or agents and only to certified livestock protection collar applicators.
 - (3) Livestock protection collars may not be distributed by registrants or agents to persons other than registrants or agents for the purpose of resale.
 - (4) Each registrant may designate registrant agents and shall file with the department written notice of the name, home address, address of distribution site, and telephone number of each agent. The registrant shall notify the department of any change in this information within ten days. The department shall notify the registrant in writing if the agent is approved or disapproved.
 - (5) Each livestock protection collar shall have a unique serial number clearly and firmly affixed to it.
 - (6) Registrants and agents shall dispose of livestock protection collars strictly in accordance with label directions.
 - (7) Registrants and agents shall distribute the forms prescribed by the department for use by LPC applicators with each distribution of livestock protection collars.
 - (8) Registrants and agents shall report to the department any incident or complaints of misuse involving a livestock protection collar.
- (d) In order to be certified as an LPC applicator, the following criteria must be met.
- (1) A person seeking certification as a licensed commercial LPC applicator shall comply with the licensing requirements of §7.22 and §7.23 of this chapter (relating to Licensing of Applicators and Applicator Business Proof of Financial Responsibility), complete livestock protection collar training, pass a test prescribed by the department, and pay the license fee prescribed by §7.20 of this chapter (relating to Application).
 - (2) A person seeking certification as a licensed noncommercial LPC applicator shall comply with the licensing requirements of §7.22 of this chapter (relating to Licensing of Applicators), complete livestock protection collar training, pass a test prescribed by the department and pay the license fee prescribed by §7.20 of this chapter (relating to Application);
 - (3) A person seeking certification as a private LPC applicator must possess a valid private applicator certificate or a private applicator license in accordance with §7.22 of this chapter (relating to Licensing of Applicators), complete livestock protection collar training and pass a test prescribed by the department. No testing fee will be collected from private applicators;

- (4) All LPC applicators must recertify as required by §7.24 of this chapter (relating to Applicator Recertification). Each LPC applicator is responsible for giving written notice to the department of any change of address. The department may require retraining and retesting of any LPC applicator who fails to comply with the use, recordkeeping or other requirements of the department.
 - (5) The licensing requirements of §7.25 of this chapter (relating to Expiration and Renewal of Licenses) apply to all LPC applicators.
- (e) LPC applicators must undergo training, including training in the following areas:
- (1) the proper use of the livestock protection collar;
 - (2) the proper method of disposing of collars and contaminated materials;
 - (3) health and safety hazards, safe handling techniques, and emergency treatment in cases of accidental exposure;
 - (4) recordkeeping and reporting requirements;
 - (5) proper methods of identifying causes of predation; and
 - (6) approved methods of predator management.
- (f) All LPC applicators shall comply with the label, including the use restrictions, when using the livestock protection collar. Copies of the label and applicator record forms shall be obtained with the purchase or transfer of any collar from a registrant or agent. Additional copies of the label and forms may be obtained from the department.
- (g) Each registrant shall maintain records for the registrant and all registrant agents on forms prescribed by the department for at least two years which include:
- (1) an inventory of Compound 1080 and an inventory of livestock protection collars including the serial number, size, type of straps, number of straps, and configuration for each collar. An annual production report shall be filed on forms prescribed by the department by each registrant by January 31 for the previous calendar year reporting on the number and type of livestock protection collars produced and distributed and on the quantity of Compound 1080 purchased and used;
 - (2) information on all distributions to applicators or agents, including:
 - (A) the date of distribution;
 - (B) the name, telephone number, address, and applicator license number of each LPC applicator who purchased or received a collar;
 - (C) the number of livestock protection collars distributed; and
 - (D) the serial number of each collar.
 - (3) A record of all distributions of collars by a registrant or agent shall be submitted to the department monthly. A report is not required for months in which a distribution does not occur.
 - (4) Each collar pool agent shall notify the department monthly of all distributions of collars and shall maintain records for at least two years, including:
 - (A) the date of distribution or receipt of collars;
 - (B) the name, telephone number, address, and applicator license number of each LPC applicator who purchased, transferred, or received a collar;
 - (C) the number of livestock protection collars distributed;
 - (D) the serial number of each collar; and
 - (E) the names and addresses of collar pool members.

- (5) Each LPC applicator shall maintain records on the use of the collar on forms prescribed by the department. The records shall include:
 - (A) the serial number of the collar attached to livestock;
 - (B) the pasture(s) where collared livestock were placed;
 - (C) the dates of each attachment, inspection, and removal;
 - (D) the number and locations of livestock found with ruptured or punctured collars and the apparent cause of the damage;
 - (E) the number, dates, and approximate location of collars lost;
 - (F) the species, locations, and dates of all animals suspected to have been killed by collars;
 - (G) all suspected poisonings of humans, domestic animals, or nontarget wild animals resulting from collar use and all other accidents involving the release of Compound 1080; and
 - (H) number of collars in storage.
- (6) Each LPC applicator shall maintain a copy of collar use records for at least two years.
- (7) Each registrant, agent, or LPC applicator shall report accidents involving any suspected or actual poisoning of threatened or endangered species, humans, domestic animals, or non-target wild animals to the department within one working day by telephone.
- (h) Instructions to noncertified applicators working under the supervision of a licensed LPC applicator. The licensed LPC applicator shall give appropriate verifiable instructions on the use of the collar to a noncertified person as required by §7.31 of this chapter (relating to Supervision) before the noncertified person may handle the collar. Licensed commercial LPC applicators must be physically present to supervise use of collars by noncertified applicators. Certified private applicators authorized to apply collars may not supervise any person using collars.

Source Note: The provisions of this §7.39 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.40 M-44 Sodium Cyanide—State-Limited-Use Requirements

- (a) Any and all pesticides and devices using sodium cyanide as the active ingredient, including the M-44 device for livestock predation control, shall be classified as state-limited-use pesticides, pursuant to the Act, §76.003. However, this section shall not apply to the use of M-44 sodium cyanide by employees of the Texas Animal Damage Control Service when performing official duties and using M-44 cyanide capsules under the federal government registration.
- (b) In addition to the definitions set out in the Act, §76.001 and §7.1 of this chapter (relating to Definitions), the following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise:
 - (1) Authorized dealer—A dealer licensed under the Act, §76.071, and specifically approved by the department to distribute M-44 sodium cyanide.
 - (2) M-44 applicator—A person who has obtained authorization from the department for the use of M-44 sodium cyanide.
 - (3) M-44 sodium cyanide—Includes the active ingredient sodium cyanide, sodium cyanide capsules, and any device loaded with sodium cyanide for use in livestock predation control.
- (c) Dealers distributing M-44 sodium cyanide must meet the following requirements:
 - (1) All dealers who wish to distribute M-44 sodium cyanide must obtain written approval by the department. In order to obtain approval, a person must obtain from the department a pesticide dealer's license to handle restricted-use and state-limited-use pesticides and regulated herbicides

and complete special agreement forms to become an authorized dealer for the purpose of distributing M-44 sodium cyanide. An authorized dealer must meet the dealer requirements of the Act, Subchapter D, the requirements of §7.20 of this chapter (relating to Application), and any additional requirements related to the use restriction bulletin and label for M-44 sodium cyanide (EPA Registration Number 33858-2).

- (2) An authorized dealer may distribute M-44 sodium cyanide only to M-44 applicators or registrants of M-44 sodium cyanide. M-44 sodium cyanide may not be distributed or transferred by an authorized dealer to any person for the purpose of resale or transfer with the exception of registrants.
 - (3) The department will keep a list of authorized dealers and make it available to all certified applicators. Only dealers whose names appear on the list are authorized to receive or distribute M-44 sodium cyanide.
 - (4) Each authorized dealer must be or employ a person certified under this section.
 - (5) Each authorized dealer must maintain complete records of all transactions involving M-44 sodium cyanide for a period of two years, including:
 - (A) the amount of materials purchased by the authorized dealer and the date of purchase; and
 - (B) the following information for each distribution:
 - (i) the date of distribution;
 - (ii) the name, address, applicator number, county, and telephone number of any M-44 applicator to whom M-44 sodium cyanide was distributed; and
 - (iii) the amount distributed to the approved applicator.
 - (6) Authorized dealers must ensure that any distribution of M-44 sodium cyanide is accompanied by a complete label. Authorized dealers must also provide to M-44 applicators the record-keeping forms prescribed by the department. Authorized dealers may distribute sodium cyanide capsules only in boxes of ten, 25, or 50 each.
 - (7) Authorized dealers must obtain the department's approval prior to purchasing any M-44 sodium cyanide.
 - (8) An authorized dealer must report to the department any incident or complaint of misuse involving M-44 sodium cyanide.
- (d) Any person not previously certified as an M-44 sodium cyanide applicator may become certified by meeting the following criteria:
- (1) A person seeking certification as a licensed commercial M-44 sodium cyanide applicator shall comply with the licensing requirements of §7.22(d) and §7.23 of this chapter (relating to Licensing of Applicators and Applicator Business Proof of Financial Responsibility), complete M-44 sodium cyanide training, pass a test prescribed by the department, and pay the license fee prescribed by §7.20 of this chapter (relating to Application).
 - (2) A person seeking certification as a licensed noncommercial M-44 sodium cyanide applicator shall comply with the licensing requirements of §7.22(d) of this chapter (relating to Licensing of Applicators), complete M-44 sodium cyanide training, pass a test prescribed by the department, and pay the license fee prescribed by §7.20 of this chapter (relating to Application).
 - (3) A person seeking certification as a private M-44 sodium cyanide applicator must possess a valid private applicator certificate or a private applicator license in accordance with §7.22(f) of this chapter (relating to Licensing of Applicators), complete M-44 sodium cyanide training, and pass a test prescribed by the department. No testing fee will be collected from private applicators.

- (4) All M-44 sodium cyanide applicators must recertify as required by §7.24 of this chapter (relating to Applicator Recertification). Each M-44 sodium cyanide applicator is responsible for giving written notice to the department of any change of address. The department may require retraining and retesting of any M-44 sodium cyanide applicator who fails to comply with the use, recordkeeping, or other requirements of the department.
- (5) The licensing requirements of §7.25 of this chapter (relating to Expiration and Renewal of Licenses) apply to all M-44 sodium cyanide applicators.
- (e) Instructions to noncertified applicators working under the supervision of licensed M-44 sodium cyanide applicators. The licensed M-44 sodium cyanide applicator shall give appropriate verifiable instructions on the use of M-44 sodium cyanide to a noncertified person as required by §7.31 of this chapter (relating to Supervision) before the noncertified person may handle M-44 sodium cyanide. Licensed commercial and noncommercial M-44 sodium cyanide applicators must be physically present to supervise the use of M-44 sodium cyanide by noncertified applicators. Certified private applicators may not supervise any person using M-44 sodium cyanide.
- (f) Training for M-44 applicators shall include the following:
 - (1) the proper use and treatment of M-44 sodium cyanide;
 - (2) the proper method of disposing of M-44 sodium cyanide and related contaminated materials;
 - (3) safe handling techniques designed to reduce health and injury risks;
 - (4) recordkeeping requirements;
 - (5) proper methods of identifying causes of predation; and,
 - (6) approved methods of predator control.
- (g) All M-44 applicators must comply with the M-44 sodium cyanide label and use restriction bulletin issued by the department. A copy of the use restriction bulletin must be obtained with the purchase of each box of M-44 sodium cyanide. Additional copies of the bulletin and recordkeeping forms may be obtained from the department.
- (h) Each applicator shall maintain records on forms prescribed by the department dealing with the placement of the device and the results of each placement. Such records shall include, but may not be limited to:
 - (1) the number of M-44 sodium cyanide devices in place;
 - (2) the location of each M-44 sodium cyanide device;
 - (3) the dates of each placement, inspection, and removal;
 - (4) the number and location of M-44 sodium cyanide devices which have been discharged and the apparent reason;
 - (5) species of animals taken; and
 - (6) all accidents or injuries involving humans, domestic animals, wildlife, or bodies of water.

Source Note: The provisions of this §7.40 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.41 Application of Coumaphos (Active Ingredient 42%)

Products containing coumaphos, with an active ingredient of 42% by weight, which is approved for use on beef or non-lactating dairy cattle or horses, to control horn flies, lice, ticks and screwworms, must be applied in a ventilated area.

Source Note: The provisions of this §7.41 adopted to be effective April 10, 2019, 44 TexReg 1713

Subchapter E. Regulated Herbicides

RULE §7.50 General Requirements for Regulated Herbicide Applicators

- (a) The following requirements are applicable to persons applying regulated herbicides in regulated counties. No person shall apply regulated herbicides as defined in §7.30 of this chapter (relating to Classification of Pesticides), without first obtaining a spray permit for such application. A blanket permit may be issued to a licensed or certified applicator. The department may require a licensed or certified applicator who has obtained a blanket permit to submit a supplemental report of any regulated herbicide applied under the terms of the permit.
- (1) All permits expire when the acreage for which the permit was granted has been sprayed, or 180 days after issuance, whichever occurs first.
 - (2) Applications of regulated herbicides by brush, mop, wick, basal treatment, or injection method are hereby exempt from the requirements of obtaining a permit.
 - (3) Applications by an applicator licensed by the Texas Structural Pest Control Board in Weed Control category as defined in §7.124 of this chapter (relating to Structural License Categories) are exempt from the permit requirements of this section.
 - (4) All persons applying regulated herbicides to lawns are exempt from the permit requirements of this section.
- (b) All spraying of regulated herbicides must conform to these requirements in a regulated county regardless of whether or not a permit is required.
- (1) Spraying high volatile herbicides is prohibited when there are susceptible crops within a four-mile radius from any point of the land to be sprayed. Highly volatile herbicides include methyl, ethyl, butyl, isopropyl, octylamyl, and pentyl esters containing various concentrations expressed in pounds of acid equivalent per gallon.
 - (2) No person shall spray regulated herbicides when the wind velocity exceeds 10 miles per hour or as specified on the product label, if the label is more restrictive.
 - (3) The use of any turbine or blower-type ground application equipment to apply regulated herbicides is prohibited.

Source Note: The provisions of this §7.50 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.51 Requirements for Special County Provisions

- (a) The department shall not accept for adoption any request for special county provisions which will, except as provided by and consistent with the Act, Subchapter G, and regulations adopted thereunder, either directly or indirectly:
- (1) exempt applicators from obtaining spray permits, except during periods when susceptible vegetation is at a minimum;
 - (2) exempt applicators from recordkeeping requirements;
 - (3) exempt commercial applicators from requirements for proof of financial responsibility;
 - (4) prohibit the distribution of any herbicide; and/or
 - (5) require the department to inspect land prior to issuance of spray permits.
- (b) The department may consider for adoption a request by a county to:
- (1) regulate or prohibit methods of application;
 - (2) prohibit application of any regulated herbicide during any period of the year; and/or
 - (3) exempt from the provisions of the Act, Subchapter G, any portion of a county which can be identified by easily recognizable physical boundaries.

Source Note: The provisions of this §7.51 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.52 Counties Regulated

The following counties shall be subject to the provisions of the Act, Subchapter G, unless specifically excepted by provisions of §7.53 of this chapter (relating to County Special Provisions): Aransas, Austin, Bailey, Baylor, Brazoria, Brazos, Briscoe, Burleson, Childress, Cochran, Collin, Collingsworth, Culberson, Dallas, Dawson, Deaf Smith, Delta, Dickens, Donley, El Paso, Falls, Foard, Fort Bend, Gaines, Galveston, Hall, Harris, Hardeman, Haskell, Hudspeth, Hunt, Jackson, King, Knox, Lamar, Lamb, Loving, McLennan, Martin, Matagorda, Midland, Milam, Moore, Motley, Parmer, Refugio, Robertson, Rockwall, Runnels, San Patricio, Waller, Ward, Wharton, and Wilbarger.

Source Note: The provisions of this §7.52 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective April 22, 2004, 29 TexReg 3789; amended to be effective July 25, 2005, 30 TexReg 4211; amended to be effective July 22, 2007, 32 TexReg 4383; amended to be effective February 17, 2015, 40 TexReg 68712.50; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.53 County Special Provisions

- (a) **Aransas.** No permit is required for spraying regulated herbicides during the months of January and February.
- (b) **Austin.**
 - (1) Only that portion of Austin County lying east and south of the line beginning at the point where State Highway 36 crosses the north county line, thence southerly along Highway 36 to FM 949; thence westwardly along FM 949 to the San Bernard River is regulated by the Act, Subchapter G and regulations adopted thereunder.
 - (2) Between March 15th and July 31st, in that portion of Austin County lying south of Interstate Highway 10, the following restrictions on the use of 2,4-D formulations shall apply:
 - (A) the application by aircraft is prohibited;
 - (B) the use of all ester formulations by any method is prohibited.
- (c) **Bailey.**
 - (1) For the period beginning on October 1 of one calendar year through May 1 of the following calendar year, no permit will be required for the use of the regulated herbicides in that part of Bailey County defined by the following landmarks: south of Highway 746 from Texas/New Mexico state line extending east to Highway 214; then south on Highway 214 to the intersection of Highway 214 and Highway 746; then proceeding east on Highway 746 to the Bailey/Lamb County Line.
 - (2) Aerial application of regulated herbicides is prohibited in the area described in this subsection during the regulated period.
 - (3) For the period beginning on October 1 of one calendar year through April 15 of the following calendar year, no permit will be required for the use of regulated herbicides in that part of Bailey County defined by the following landmarks: north of 746 from Texas/New Mexico state line extending east to Highway 214, then south on Highway 214 to the intersection of Highway 214 and Highway 746; then proceeding east on Highway 746 to the Bailey/Lamb County line.
 - (4) Except as provided in these subsections, the aerial application of regulated herbicides is prohibited except that the aerial application of dicamba is allowed in the area described in this subsection during the regulated period.
- (d) **Baylor.**
 - (1) No permit is required for the application of a regulated herbicide during the period of September 16 to May 14 of the following year.
 - (2) The application of the following regulated herbicides are prohibited during the regulated period beginning May 15 and ending September 15 of each year:

- (A) the ester formulations of 2,4-dichlorophenoxyacetic acid (2,4-D); and
- (B) 2-methyl-4-chlorophenoxyacetic acid (MCPA).

(e) Brazoria.

- (1) For that portion of Brazoria County east of the Brazos River all formulations of 2,4-D may be aerially applied throughout the year.
- (2) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
- (3) For that portion of Brazoria County not included in paragraph (1) of this subsection, the aerial application of regulated herbicides is prohibited between March 25th and August 1st of each year.
- (4) The use of high volatile herbicides is prohibited.

(f) Brazos. That portion of Brazos County lying east of the Brazos River and west of the following described line shall be regulated by the Act, Subchapter G and regulations adopted thereunder. The eastern boundary of the regulated area is as follows:

- (1) beginning at the intersection of State Highway No. 6 and Old San Antonio Road (OSR), which point is on the north boundary line of Brazos County; thence in a southerly direction along OSR to its intersection with Texas Highway 21; thence in a westerly direction along Texas Highway 21 to the Little Brazos River; thence in a southerly direction along the east bank of the Little Brazos River to its intersection with the Brazos River; thence in a southerly direction along the east bank of the Brazos River to Koppe Bridge Road; commencing again on FM 159 in Allen Farm at the railroad intersection along FM 159 to its intersection with State Highway 105.
- (2) that portion of Brazos County lying east of the line described in paragraph (1) of this subsection shall be exempt from the Act, Subchapter G and regulations adopted thereunder.

(g) Briscoe.

- (1) The aerial application of regulated herbicides shall be prohibited from May 1 through September 1 of each year in that portion of Briscoe County that lies above the Caprock Escarpment, such area to be designated as Zone 1.
- (2) The aerial application of regulated herbicides will be allowed in Zone 1 between September 2 and October 1 of each year with the requirement of a permit.
- (3) The aerial application of regulated herbicides shall be prohibited from May 1 through October 1 of each year in that portion of Briscoe County that lies below the Caprock Escarpment, such area to be designated as Zone 2.
- (4) Only 2,4-D amine and dicamba may be applied by ground applications with the requirement of a permit.
- (5) No permit is required for the application of regulated herbicides from October 2 through April 30 of the following year.

(h) Burleson.

- (1) The application of regulated herbicides by aircraft is allowed during the period of October 1 through February 28 of the following year, as long as there are no susceptible crops located within two miles of the application area.
- (2) Between March 1 and September 30 of each year, the following restrictions on the use of 2,4-D formulations shall apply.
 - (A) Only amine formulations may be used with a boom-type sprayer for ground applications in that area beginning at Milam County line; thence south along FM Road 1362 to FM Road

166; thence east to FM Road 2039; thence south to FM 60; thence west on FM 60 to Davidson Creek; thence south along Davidson Creek to Washington County line to Brazos River; thence north along Brazos County line to Milam County line, the place of the beginning.

(B) Cluster nozzles are prohibited in the area designated in subparagraph (A) of this paragraph.

(i) Childress.

- (1) No permit is required for the application of regulated herbicides during the period of September 16 to May 15 of the following calendar year.
- (2) The application of the following regulated herbicides is prohibited during the regulated period beginning May 16 and ending September 15 of each year:
 - (A) Ester formulation of 2,4-Dichlorophenoxyacetic acid (2,4-D);
 - (B) 2-Methyl-4-Chlorophenoxyacetic Acid (MCPA);
 - (C) The application of Dicamba and 2,4-D amine is prohibited during the regulated period except during the period of May 10 and ending June 5 of each year with the requirement to obtain a permit.

(j) Cochran.

- (1) The use of 2,4-D ester is prohibited for the period beginning April 25 and ending October 15 of each year.
- (2) The aerial application of all regulated herbicides is prohibited for the period beginning April 25 and ending October 15 of each year.
- (3) A permit for application of all regulated herbicides is required for the period beginning January 1 and ending on December 31 of each year.

(k) Collingsworth.

- (1) The aerial application of regulated herbicides is allowed with the requirement of a permit between the dates of November 1 of one calendar year and April 25 of the following calendar year.
- (2) Ground and aerial applications of regulated herbicides will be allowed with the requirement of a permit throughout the year in the northeast part of the county, identified with physical boundaries north of the Salt Fork of the Red River and east of U.S. Highway 83.
- (3) Ground applications of 2,4-D amine will be allowed with the requirement for a permit throughout the county between the dates of April 16 and October 30 of each year.

(l) Dawson.

- (1) No permit is required for the application of the regulated herbicides during the period from October 1 to April 15 of the following year.
- (2) All ester formulations and/or other high volatile formulations of 2,4-D shall be prohibited.
- (3) A permit is required for the ground application of 2,4-D amine and dicamba during the regulated period from April 16 through September 30 of each year.
- (4) The aerial application of dicamba only is allowed with the requirement of a permit during the regulated period from April 16 through September 30 of each year.

(m) Deaf Smith.

- (1) The use of all ester formulations of regulated herbicides is prohibited from May 1 through September 30 of each year;
- (2) A permit is required for the application of all other formulations of regulated herbicides from May 1 through September 30 of each year; and
- (3) A permit is not required for the application of regulated herbicides between the dates of October 1 through April 30 of each year.

- (n) **Delta.** The aerial application of regulated herbicides is prohibited between April 15 and September 1 of each year.
- (o) **Dickens.**
- (1) The application of all ester formulations of regulated herbicides is prohibited between May 15 and September 15.
 - (2) The application of regulated herbicides by aerial application is prohibited between May 15 and September 15.
 - (3) The application of regulated herbicides by cluster nozzle applications is prohibited between May 15 and September 15.
 - (4) Only 2,4-D amine formulation and dicamba may be applied by ground applications between May 15 and September 15, with the requirement of a permit.
 - (5) No permit is required for the application of regulated herbicides between September 16 and May 14.
- (p) **Falls.**
- (1) The use of all ester formulations of regulated herbicides is prohibited from April 1 through August 31 of each year.
 - (2) A permit is required for the application of the other formulations of regulated herbicides from April 1 through August 31 of each year.
 - (3) A permit is not required for the application of regulated herbicides between the dates of September 1 to March 31 of each year.
- (q) **Foard.** That portion of Foard County within the area described as follows is regulated by the provisions of the Act, Subchapter G and regulations adopted thereunder, for the period beginning May 25 and ending October 10 of each year: all of that portion of Foard County lying east of a line which has its origin beginning at a point where the Pease River intersects the east boundary line of Section 509, Block A, H&T.C.R.R.C., survey, thence continuing southerly along the adjoining section lines ending at a point of intersection with the 345 KV transmission electric power lines, then, all of the portion of Foard County lying north of a line along the 345 KV transmission electric power lines extending easterly to the Wilbarger County line.
- (r) **Fort Bend.**
- (1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.
 - (2) The application of high volatile herbicides is prohibited.
 - (3) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
- (s) **Gaines.**
- (1) The application of all regulated herbicides is allowed without the requirement of a permit between the dates of October 1 and March 31 of the following year.
 - (2) A permit is required for the application of the regulated herbicides between the dates of April 1 to September 30 of each year.
- (t) **Hall.** The application of regulated herbicides is prohibited between May 10 and October 15 of each year, with the exception of the application of dicamba by ground equipment provided the user obtains a permit from the department prior to the use during the regulated period. The application of regulated herbicides is allowed without the requirement of a permit for the period beginning October 16 and ending May 9 of the following year.
- (u) **Hardeman.**
- (1) No permit is required for the application of regulated herbicides during the period of September 16 to May 15 of the following calendar year.

- (2) A permit is required for the application of the following regulated herbicides during the regulated period beginning May 16 and ending September 15 of each year:
- (A) Any formulation of 2,4-Dichlorophenoxy acetic acid (2,4-D);
 - (B) 2-Methyl-4-chlorophenoxy acetic acid (MCPA);
 - (C) Dicamba.
- (v) **Harris.**
- (1) The use of high volatile herbicides is prohibited.
 - (2) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
- (w) **Haskell.**
- (1) No permit is required between November 1 and May 20 of the following calendar year.
 - (2) Aerial application of regulated herbicides is prohibited between June 2 and November 1 of each year.
- (x) **Hudspeth.**
- (1) The use of all ester formulations of regulated herbicides is prohibited between the dates of April 1 and October 15 of each year.
 - (2) A permit is required for the application of the other formulations of regulated herbicides between the dates of April 1 and October 15 of each year.
 - (3) A permit is not required for the application of the regulated herbicides between the dates of October 16 to March 31 of the following year.
- (y) **Hunt.**
- (1) The aerial application of regulated herbicides shall be prohibited from April 15 through September 1 of each year.
 - (2) No permit is required for the application of regulated herbicides from September 1 of one calendar year through April 15 of the following calendar year.
- (z) **Jackson.** No permit is required for the application of regulated herbicides during the months of January and February of each year.
- (aa) **King.** Aerial application of regulated herbicides is prohibited between June 10 and October 15 of each year.
- (bb) **Knox.** That portion of the county lying north of the Brazos River to its intersection with longitude 99 degrees 35'; thence north to latitude 33 degrees 42' going west to State Highway 6, then north to the Foard County line, west to King County line; thence south to the Brazos River, is exempt from the Act, Subchapter G and regulations adopted thereunder. All other portions of Knox County are required to comply with provisions of the Act, Subchapter G and regulations adopted thereunder, except that during the period between October 1 through March 31 of the following calendar year no permit will be required.
- (cc) **Lamar.**
- (1) That portion of Lamar County beginning at the Red River County line on State Highway 271N, which point is the east boundary line of Lamar County; thence on a northwesterly direction along 271 North to the town of Pattonville; thence in a westerly direction from Pattonville along Jefferson Road for a distance of two miles; thence south on unnamed oil top county road 0.9 mile to community of Shady Grove; thence in a westerly direction on unnamed oil top county road for one mile to the intersection of FM 905; thence south one mile on FM 905 to first unnamed oil top county road in community of Plainview; thence in a westerly direction on county road four miles to the town of Biardstown to intersection of FM 1497; thence northwesterly on FM 1497 0.3 mile to Hickory Creek; thence southeasterly on Hickory Creek to North Sulphur River, which is the south boundary line of Lamar County; thence easterly along the south county line to the southeast corner of the county; thence northerly along the east

county line to its intersection with Highway 271 North, to the point of beginning is regulated by the Act, Subchapter G and regulations adopted thereunder.

- (2) Aerial application of regulated herbicides is prohibited in the regulated portion of Lamar County between April 15 and September 1 each year.
- (dd) **Lamb.** During the period between September 15 of one calendar year through April of the following year, no permit will be required for the following regulated herbicides:
- (1) 2-methyl-4 chlorophenoxyacetic acid (MCPA);
 - (2) polychlorinated benzoic acids; and
 - (3) either alone or in mixtures any of the herbicides listed in paragraph (1) and (2) of this subsection.
- (ee) **Matagorda.**
- (1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.
 - (2) The application of high volatile herbicides is prohibited.
 - (3) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
- (ff) **Milam.**
- (1) The use of all ester formulations of regulated herbicides will be prohibited between the dates of April 1 and August 31 of each year.
 - (2) A permit will be required for the application of the other formulations of regulated herbicides between the dates of April 1 and August 31 of each year.
 - (3) A permit will not be required for the application of the regulated herbicides between the dates of September 1 to March 31 of the following year.
- (gg) **McLennan.**
- (1) The use of all ester formulations of regulated herbicides will be prohibited between the dates of April 1 and August 31 of each year.
 - (2) A permit will be required for the application of the other formulations of regulated herbicides between the dates of April 1 and August 31 of each year.
 - (3) A permit will not be required for the application of the regulated herbicides between the dates of September 1 to March 31 of the following year.
- (hh) **Moore.**
- (1) The use of all ester formulations of regulated herbicides is prohibited from May 1 through September 30 each year.
 - (2) A permit is required for the application of all other formulations of regulated herbicides from May 1 through September 30 of each year.
 - (3) No permit is required for the application of regulated herbicides during the period beginning October 1 and ending April 30 of the following year.
- (ii) **Motley.** No permit is required for the period of November 1 to May 14 of the following year.
- (jj) **Parmer.** No permit is required in Parmer County for applications of regulated herbicides between November 1 and March 31 of the following year. However, the application of all ester formulations of 2,4-D is prohibited between the dates of April 15 and October 1 of each year.
- (kk) **Refugio.**
- (1) The application of the ester formulations of 2,4-D by any means is prohibited between the period of March 1 and September 15 of each year. The application of the amine formulations of 2,4-D is prohibited between the period of March 10 and September 15 of each year except by permit.

(2) No permit is required for the application of regulated herbicides during the period of September 16 and ending the last day of February of the following year.

(ll) **Robertson.**

- (1) Persons in that portion of Robertson County, east of State Highway 6, are exempted from requirements of the Act, Subchapter G and regulations adopted thereunder.
- (2) A permit is required for the application of regulated herbicides in that portion of Robertson County, west of State Highway 6 between the dates of April 1 and September 15 each year.

(mm) **Runnels.** That portion of Runnels County beginning on the west county line at the point of intersection with the Colorado River, east-southeasterly along the Colorado River to its intersection with U.S. Highway 83, thence north along U.S. Highway 83 to its intersection with the north county line, thence westerly along the north Runnels County line to the northwest corner of the county, thence southerly along the west county line to the Colorado River, the point of beginning, is regulated by the Act, Subchapter G and regulations adopted thereunder. In regulated areas, no permit is required from October 1 through May 25 of the following year. The application of ester formulations of regulated herbicides is prohibited from May 26 through September 30 of each year. The application of other regulated herbicides will be allowed beginning May 26 through September 30 of each year provided that a spray permit is obtained prior to each application.

(nn) **San Patricio.** No permit is required during the period beginning August 15 and ending March 1 of the following year. Application of regulated herbicides during the period of March 2 through August 14 must be in compliance with the Act, Subchapter G and regulations adopted thereunder. Only boom-type equipment can be used, for ground applications with nozzle height not to exceed 24 inches and maximum pressure not to exceed 20 pounds per square inch. The use of 2,4-D amine herbicides must meet the following requirements for both ground and aerial applications:

- (1) wind velocity of 0–5 mph downwind within 16 rows and upwind 8 rows;
- (2) wind velocity of 6–10 mph downwind 1/8 mile and upwind 8 rows.

(oo) **Wharton.**

- (1) The aerial application of all formulations of 2,4-D is prohibited in that portion of Wharton County east of the Colorado River between March 10 and September 15 of each year.
- (2) The application of all formulations of 2,4-D by any method is prohibited during the period beginning March 10 and ending October 1 of each year, in that portion of Wharton County lying west of the Colorado River.
- (3) The use of high volatile herbicides is prohibited.
- (4) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.

(pp) **Wilbarger.**

- (1) No permit is required for the application of regulated herbicides during the period of September 16 to May 9 of the following calendar year.
- (2) The application of the following regulated herbicides is prohibited during the regulated period beginning May 10 and ending September 15 of each year:
 - (A) Ester formulations of 2,4-Dichlorophenoxyacetic Acid (2,4-D);
 - (B) 2-Methyl-4-Chlorophenoxyacetic Acid (MCPA).
- (3) The aerial application of polychlorinated benzoic acids and 2,4-D amine is prohibited during the regulated period except during the period of May 10 and ending May 20 of each year. Ground applications of polychlorinated benzoic acids and 2,4-D Amine may be made during the regulated period with the requirement of a permit.

- (4) Research conducted by the Texas A&M University System under the auspices of brush and weed control, using all regulated herbicides, will be allowed during the regulated period. Aerial applications must provide a buffer zone of at least five statute miles from any susceptible crops, and wind velocity must not exceed 10 mph during application. Research will be allowed during the period beginning May 15 and ending September 15 of each year. The department shall be notified before the commencement of such research projects.

Source Note: The provisions of this §7.53 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective February 24, 1999, 24 TexReg 1154; amended to be effective July 4, 2001, 26 TexReg 4866; amended to be effective April 22, 2004, 29 TexReg 3789; amended to be effective July 25, 2005, 30 TexReg 4211; amended to be effective July 22, 2007, 32 TexReg 4383; amended to be effective February 17, 2015, 40 TexReg 687; amended to be effective March 9, 2023, 48 TexReg 1286

Subchapter F Enforcement

RULE §7.60 Enforcement

In addition to the enforcement powers of the commissioner found in the Act, Subchapter H, the department may enter the premises of a person who engages in any activity regulated under the Act and this chapter during normal business hours to:

- (1) examine records;
- (2) inspect any apparatus subject to the Act; or
- (3) inspect pesticide packaging, labels, and labeling information for compliance with the Act.

Source Note: The provisions of this §7.60 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.61 Stop Use, Stop Distribution or Removal Order

- (a) A written or printed order may be issued to any person in possession of a pesticide that has been determined to be in violation of the Act or these regulations.
- (b) Upon receipt of an order under this section, a person may not use or distribute a pesticide for which the order was issued without approval of the department.
- (c) Reasons for which a Stop Distribution, Stop Use or Removal Order may be issued include, but are not limited to, the following:
 - (1) a pesticide not currently registered with EPA and/or the department;
 - (2) a pesticide that does not bear a legible label;
 - (3) a pesticide that bears an adulterated or incomplete label;
 - (4) a pesticide in a broken, leaking or otherwise unsafe container;
 - (5) a pesticide that has been classified as a restricted-use or state-limited-use pesticide or a regulated herbicide that is being distributed without a current pesticide dealer license;
 - (6) a pesticide that has been classified as a restricted-use or state-limited-use pesticide or a regulated herbicide that is being used by a person that is not an appropriately licensed or certified applicator or working under the direct supervision of an appropriately licensed applicator;
 - (7) a pesticide whose use has been prohibited or cancelled; or
 - (8) a pesticide found to be in violation with any provision of the Act or these regulations.
- (d) The custodian or owner of the pesticide shall maintain documentation on the disposition of a pesticide to which an order has been issued under this section.

- (e) The department may require the person that has the responsibility for bringing the pesticide in compliance with the Act and these regulations to take any corrective action necessary to resolve the area of noncompliance.

Source Note: The provisions of this §7.61 adopted to be effective December 4, 1997, 22 TexReg 11652.

RULE §7.62 Complaint Investigation

- (a) Any person with cause to believe that any provision of the Act or this chapter has been violated may file a complaint with the department. The department will accept either written or oral notification, but may require that a complaint form be signed in order to conduct an investigation.
- (b) Any person who has experienced or is alleging adverse effects from a pesticide application may file a complaint with the department. Such complaint shall be subscribed by the complaining party and set forth in detail the facts of the alleged violation.
- (c) The department will investigate the complaint and make a full written report.
- (d) This report will be made available to the parties concerned upon written request to the extent provided under the Texas Government Code, Chapter 552.
- (e) The department shall, as soon as possible, notify the applicator(s) believed to be responsible for the complaint and the owner or lessee of the land where the application occurred.
- (f) The department will not estimate monetary losses sustained.
- (g) No finding of violation by the department will be premised solely on the uncorroborated statements of an anonymous or unidentified complainant, but all such complaints will be investigated routinely. For each such complaint, the department will determine the extent of investigation which is appropriate to address the complaint.

Source Note: The provisions of this §7.62 adopted to be effective December 4, 1997, 22 TexReg 11652.

Subchapter G Penalties

RULE §7.70 Penalties

- (a) The Code, §12.020, which provides for the assessment of administrative penalties, applies to a person who violates the Act or these regulations. Failure to pay an administrative penalty assessed by a final order of the department is a violation of these regulations. Failure to pay a final civil penalty judgment in which express findings of a violation are made and which was entered pursuant to the Act shall also constitute a violation of these regulations.
- (b) It shall be a violation for a person to distribute restricted-use or state-limited-use pesticides or regulated herbicides without a current pesticide dealer license in accordance with the Act, Subchapter D (relating Licensing of dealers).

Source Note: The provisions of this §7.70 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

RULE §7.71 Use Inconsistent with Label Directions

- (a) It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with its label or labeling. Use inconsistent with the label includes, but is not limited to:
 - (1) applications at sites, rates, concentrations, intervals, or under conditions not specified in the labeled directions, except:

- (A) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency;
 - (B) applying a pesticide against any target pest not specified on the label or labeling if the application is to the crop, animal, or site specified on the labeling, unless the department or EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling after the department or EPA has determined that the use of the pesticide against other pests would cause an unreasonable, adverse effect on the environment;
 - (C) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling or unless prohibited by law or regulation;
 - (D) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling;
 - (E) when a pesticide is applied in conformance with an approved experimental use permit (EUP);
 - (F) when a pesticide is applied in conformance with an approved emergency exemption granted by EPA to a federal or state agency;
 - (G) when a pesticide is applied in conformance with an approved special local need registration; and
 - (H) when a pesticide is applied in any situation receiving prior written approval from EPA;
- (2) tank mixing of pesticides, or using application techniques, or equipment prohibited by the label;
 - (3) failure to observe reentry intervals, preharvest intervals, grazing restrictions, or worker protection requirements:
 - (A) it is the responsibility of the person in control of the commodity or site treated to be knowledgeable of and comply with the requirements of this paragraph; and
 - (B) if a commercial applicator furnishes the pesticide, it is the commercial applicator's responsibility to notify the person in control of the commodity or site treated of the requirements of this section that pertain to restricted-entry intervals, preharvest intervals, grazing restrictions, or worker protection requirements, prior to, or at the time of treatment; and
 - (4) improper storage or disposal of the pesticide or its container.
- (b) It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with any permit, emergency exemption or special local needs registration issued by the department or EPA.

Source Note: The provisions of this §7.71 adopted to be effective December 4, 1997, 22 TexReg 11652; amended to be effective March 9, 2023, 48 TexReg 1286

Texas Agriculture Statutes

Chapter 125. Agricultural Hazard Communication Act

Texas Agriculture Code

Sec. 125.001. Declaration Of Purpose.

The legislature finds that the health and safety of persons living and working in agricultural areas in the state may be improved by providing access to information regarding certain hazardous chemicals to which they may be exposed either during their normal employment activities, during emergency situations, or as a result of proximity to the use of those chemicals. The legislature also finds that, because of the conditions of agricultural employment, there is a unique situation regarding certain agricultural laborers that makes it necessary to establish formal procedures to provide access to information regarding certain hazardous chemicals and to assure those laborers that there will be no retaliation by the employer for the exercise of rights under this chapter. This chapter is intended to assure that accessibility to information regarding chemicals covered by this chapter be provided to agricultural laborers who may be exposed to those chemicals in agricultural workplaces, to certain emergency service organizations responsible for dealing with chemical hazards during emergency situations when those chemicals are in close proximity to residential areas, and to the department to make the information available to the general public through specific procedures.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.002. Definitions.

In this chapter:

- (1) **"Agricultural laborer"** means a person who plants, cultivates, harvests, or handles an agricultural or horticultural commodity in its unmanufactured state as determined by rule of the department, and includes an agricultural laborer who handles a chemical covered by this chapter. Office workers, cooks, maintenance workers, security personnel, and nonresident management are not agricultural laborers, except for purposes of a gross annual payroll determination, unless their job performance routinely involves potential exposure to chemicals covered under this chapter. Farm and ranch laborers working solely with livestock and persons working solely in the retail sales component of a business are not agricultural laborers for purposes of this chapter.
- (2) **"Chemical name"** means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.
- (3) **"Common name"** means any designation of identification such as code name, code number, trade name, brand name, or generic name used to identify a chemical other than by its chemical name.
- (4) **"Chemical manufacturer"** means an employer in Standard Industrial Classification (SIC) Codes 20 through 39.

- (5) **"Designated representative"** means the individual or organization to whom an agricultural laborer gives written authorization to exercise the laborer's rights under this chapter. A designated representative is not required to reveal the name of the agricultural laborer he represents if the department has reviewed the laborer's written authorization, certifies that the representative has that authorization, and determines that the agricultural laborer would be entitled to the information the designated representative is seeking to obtain. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written authorization from a laborer.
- (6) **"Distributor"** means any business, other than a chemical manufacturer or importer, that supplies chemicals covered by this chapter to other distributors or to purchasers.
- (7) **"Expose" or "exposure"** means that an agricultural laborer is subjected to a chemical covered by this chapter in the course of employment through any route of entry, including inhalation, ingestion, skin contact, or absorption, and includes potential, possible, or accidental exposure.
- (8) **"Fire chief"** means the elected or paid administrative head of a fire department as defined in Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes).
- (9) **"Label"** means any written, printed, or graphic material displayed on or affixed to containers of chemicals covered by this chapter.
- (10) **"Material safety data sheet" ("MSDS")** means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) standard for that document or, in the case of a chemical labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) for which an MSDS is both unavailable and not required under the federal OSHA's hazard communication standard, a product label or other equivalent document with precautionary statements, such as hazards to humans and domestic animals, and environmental, physical, or chemical hazards, including warning statements.
- (11) **"Work area"** means a room, defined space, or field where chemicals covered by this chapter are stored or used and where agricultural laborers may be present.
- (12) **"Workplace"** means a geographical location containing one or more work areas.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.003. Application.

- (a) This chapter applies only to the following employers who annually use or store any one of the chemicals covered by this chapter in excess of 55 gallons or 500 pounds or an amount that the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter:
 - (1) employers who themselves or through labor agents hire agricultural laborers to perform seasonal or migrant work and whose gross annual payroll for those laborers is \$15,000 or more; and
 - (2) employers who themselves or through labor agents hire agricultural laborers for purposes other than seasonal or migrant work and whose gross annual payroll for those laborers is \$50,000 or more.
- (b) This chapter applies only to the following chemicals:
 - (1) chemicals labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); and
 - (2) fertilizers with chemicals that are listed or defined as hazardous chemicals in 29 CFR Section 1910.1200(c) or 1910.1200(d)(3), including those listed or defined in subsequent comparable regulations.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.004. Workplace Chemical List.

- (a) An employer covered by this chapter shall compile and maintain a workplace chemical list on a form prescribed by the department that contains the following information by crop for each chemical covered by this chapter that is actually used or stored annually in the workplace in excess of 55 gallons or 500 pounds or an amount that the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter:
 - (1) the product name used on the MSDS and container label and the Environmental Protection Agency registration number, if applicable;
 - (2) the date and crop on which the chemical was applied or used; and
 - (3) the work area in which the chemical is actually stored or used.
- (b) The employer shall update the workplace chemical list as necessary but not less frequently than annually.
- (c) The workplace chemical list may be prepared for the workplace as a whole or for each work area and must be readily available to agricultural laborers and their designated representatives. New or newly assigned agricultural laborers shall be made aware of the workplace chemical list before working with chemicals covered by this chapter or in a work area containing those chemicals.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.005. Workplace Chemical List Form, Maintenance, And Access.

- (a) The department shall prescribe forms for workplace chemical lists required by this chapter with places to indicate the crop, the product name of the chemical that is applied to the crop or that is stored, and the location and date of its application, use, or storage, as appropriate.
- (b) An employer covered by this chapter shall maintain one form for each crop, work area, or workplace as a whole, as appropriate, and shall add information to the form as different chemicals are applied, used, or stored.
- (c) The employer shall attach relevant information to the form, including MSDSs.

- (d) The employer shall keep the forms and attachments accessible and available for copying and shall store them in a location suitable to preserve their physical integrity.
- (e) The employer shall keep the forms and attachments under this chapter for 30 years. However, the department shall provide by rule that an employer may file with the department annually the forms and attachments, including an estimate of the total amount of each chemical listed on the form that was used. The department shall categorize and cross-reference the data on the forms in a manner to preserve the data for future medical use. An employer who files the forms and attachments with the department under rules adopted under this section is not required to preserve the forms.
- (f) If it is determined after a hearing conducted under Section 12.032 that an employer has repeatedly failed to maintain the forms and attachments as required, the department may require the employer to file the documents with the department. In addition, the person may be subject to any applicable penalties provided by this chapter.
- (g) If agricultural activities for which forms and attachments are maintained cease at a workplace, the forms and attachments shall be filed with the department, and the department shall retain the information for 30 years. If an employer covered by this chapter is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the forms as provided by Subsection (e) of this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of forms and attachments.
- (h) Except as otherwise provided by this section, the employer shall show the forms and attachments, on request, to an employee, designated representative, treating medical personnel, or a member of the community. The designated representative or treating medical personnel are not required to identify the employee represented or treated. If the employer has filed the forms and attachments with the department, the employer shall inform the requestor of that fact.
- (i) If a designated representative or member of the community desires a copy of a form and attachments and the employer refuses to provide a copy, that person shall notify the department of the request and the employer's refusal. Within two working days, the department shall request that the employer provide the department with all pertinent copies. The employer shall provide copies of the form and attachments to the department within 24 hours after the department's request if a designated representative desires the copies, and within 14 days after the department's request if a member of the community desires the copies.
- (j) The employer may not refuse to provide the forms and attachments to an employee or treating medical personnel.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 3.25, eff. Sept. 1, 1995.

Sec. 125.006. Material Safety Data Sheets.

- (a) Chemical manufacturers and distributors shall provide appropriate MSDSs to purchasers in this state of chemicals covered by this chapter.
- (b) Employers covered by this chapter shall maintain the most current MSDS received from manufacturers or distributors for each purchased chemical covered by this chapter. If an MSDS has not been provided by the manufacturer or distributor for chemicals on the workplace chemical list at the time the chemicals are received at the workplace, the employer shall request one in writing from the manufacturer or distributor in a timely manner. This chapter does not require an employer who is not a chemical manufacturer to create an MSDS.
- (c) The department may require any person who has or obtains a registration for a pesticide under Sections 76.041-76.048 of this code to provide with the registration a copy of the most current and complete MSDS for that pesticide.

- (d) The department by rule may require chemical manufacturers to submit MSDSs for chemicals covered by this chapter, excluding chemicals covered by Subsection (c) of this section.
- (e) All MSDSs in the files of the department are public records.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1.

Sec. 125.007. Labels.

- (a) Existing labels on incoming containers of chemicals covered by this chapter may not be removed or defaced.
- (b) Agricultural laborers may not be required to work with a chemical covered by this chapter from an unlabeled container except for a portable container intended for the immediate use of the laborer who performs the transfer.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.008. Emergency Information.

- (a) Employers covered by this chapter and other entities who normally store products labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) in an amount in excess of 55 gallons or 500 pounds or an amount the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter within one-quarter mile of a residential area composed of three or more private dwellings shall provide to the fire chief of the fire department having jurisdiction over the storage place, in writing, the names and telephone numbers of knowledgeable representatives of the employer or other entity storing the product who can be contacted for further information or contacted in case of an emergency.
- (b) Each employer, on request, shall provide a copy of the workplace chemical list to the fire chief having jurisdiction over the storage place. The employer shall notify the fire chief of any significant changes that occur in the workplace chemical list.
- (c) The fire chief having jurisdiction over the storage place or his representative, on request, shall be permitted to conduct on-site inspections of the chemicals on the workplace chemical list for the sole purpose of preparing fire department activities in case of an emergency.
- (d) Employers shall provide to the fire chief having jurisdiction over the storage place, on request, a copy of the MSDS for any chemical on the workplace chemical list.
- (e) On request, the fire chief having jurisdiction over the storage place shall make the workplace chemical list and MSDSs available to members of the fire department having jurisdiction over the workplace and to other personnel outside the fire department who are responsible for preplanning emergency activities, but may not otherwise distribute the information without approval of the employer.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.009. Training Program Provided By Department.

- (a) The department in conjunction with the Texas Agricultural Extension Service shall develop an ongoing training program for agricultural laborers. The program must provide information the department considers appropriate, and must include:
 - (1) information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication;
 - (2) information on the proper storage, acute and chronic effects, and safe handling of chemicals covered by this chapter;

- (3) information on protective clothing and equipment and first aid treatment to be used with respect to the chemicals covered by this chapter; and
 - (4) general safety instructions on the handling, cleanup procedures, and disposal of chemicals covered by this chapter.
- (b) The department shall provide the training program in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The department by rule may determine to provide the training program in additional counties with a significant farm labor work force or based on other relevant factors. In all other counties, the county office of the Texas Agricultural Extension Service shall provide the training program.
 - (c) The department or the county office of the Texas Agricultural Extension Service, as appropriate, shall notify agricultural laborers on a regular basis of the training program by public service announcements given by the media and shall contact in writing charitable, public, religious, and health care provider organizations to announce the training program to agricultural laborers in the county served by the organization.
 - (d) In addition to the Texas Agricultural Extension Service, the department may develop the training program in conjunction with the Texas Department of Health, other appropriate state agencies, clinics, hospitals, and other health care providers in counties in which the training program will be conducted, and organizations representing employers, organizations representing employees, and organizations representing manufacturers of chemicals covered by this chapter.
 - (e) The department shall prepare and make available to employers appropriate training materials for employers covered by this chapter and their managers and labor contractors.
 - (f) To help cover production costs, the department may charge not more than \$10 plus the cost of a blank videotape from a person desiring to purchase the videotaped training program.
 - (g) The department or the county office of the Texas Agricultural Extension Service, as appropriate, shall provide to each agricultural laborer who completes the training program a card evidencing participation in the program. An employer may not refuse to hire an agricultural laborer solely because the laborer does not have a card issued under this subsection. An employer who refuses to hire an agricultural laborer for that reason is not entitled to the 14 days' written notice provided by Section 125.016(d) of this code.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.010. Crop Sheet Developed By Department.

- (a) The department shall develop crop sheets that contain the following information:
 - (1) the kinds of chemicals typically used on a particular crop;
 - (2) the typical time a chemical is applied to a particular crop;
 - (3) general safety information, including information on general hygiene, clothing, contact with chemicals, medical symptoms, pregnancy, and other relevant safety data;
 - (4) a notice of the training programs and the counties in which the programs will be conducted;
 - (5) the availability of MSDSs for chemicals used on a particular crop;
 - (6) the means of locating emergency medical information;
 - (7) agricultural laborers' rights under this chapter;
 - (8) the name and telephone number of the person to contact for information under this chapter;
 - (9) the appropriate telephone number for emergency information; and
 - (10) any other safety or health-related information the department considers relevant.
- (b) The information on the crop sheet must be printed in English and Spanish, except that the information required by Subsections (a)(1) and (a)(2) of this section is required to be printed only in English. The department may provide crop sheets printed in other languages commonly used by agricultural laborers who work with a particular crop.

- (c) The department shall develop the crop sheets in conjunction with the Texas Department of Health, the Texas Agricultural Extension Service, other appropriate state agencies, and clinics, hospitals, and other health care providers in counties in which training programs are provided by the department under Section 125.009 of this code.
- (d) Annually, the department shall:
 - (1) provide appropriate crop sheets to clinics, hospitals, and other health care providers that serve agricultural laborers and that are located in counties in which the training program is provided; and
 - (2) provide to an employer covered by this chapter one crop sheet for each crop grown by that employer.
- (e) The director of the Texas Feed and Fertilizer Control Service under Section 63.003 of this code shall provide to the department the information that is needed by the department under Subsection (a) of this section for the fertilizers that are covered by this chapter.
- (f) For purposes of developing crop sheets under this chapter and complying with other provisions of this chapter, nursery stock, stored grain, and other logical groupings may be considered a single crop as determined by rules adopted by the department.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.011. Crop Sheet Provided By Employer.

- (a) An employer covered by this chapter shall provide crop sheets to each agricultural laborer pertaining to the crops that laborer will be working with if:
 - (1) the laborer does not have a card issued under Section 125.009(g) of this code; or
 - (2) the laborer requests the crop sheets.
- (b) An employer who is required under Subsection (a) of this section to provide crop sheets to an agricultural laborer shall ensure that the information on a crop sheet required by Sections 125.010(a)(3), (a)(4), and (a)(10) of this code that pertains to the crops with which the laborer will be working is read to the laborer at least once each work season. When the crop sheet is read, the employer or the employer's agent shall inform the laborer of the date on which chemicals covered by this chapter were last applied or are scheduled to be applied to the field or to other areas in which the laborer will be working and shall inform the laborer of the time on which the reentry period, if any, expired for chemicals covered by this chapter that have been applied.
- (c) If an employer is required under Subsection (b) of this section to read a crop sheet to an agricultural laborer, the employer or a person designated by the employer shall read the appropriate crop sheets on the first day of each work season or on the day the laborer begins employment with that employer, whichever is later.
- (d) In addition to the crop sheet, the department shall require an employer to offer to the agricultural laborer, on the day on which the laborer is given his first pay for that work season, basic safety and health-related information approved by the department. That information shall be available to the employers free of charge.
- (e) An employer who does not provide or read the crop sheets as required by this section is not entitled to the 14 days' written notice provided by Section 125.016(d) of this code.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.012. Protective Clothing.

An employer covered by this chapter shall provide any protective clothing or device that is recommended by the MSDS, crop sheet, or department rule and that is in addition to the standard longsleeved shirt, long pants, boots or shoes, and socks normally provided by the agricultural laborer.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.013. Rights Of Agricultural Laborers.

- (a) Agricultural laborers employed by employers covered by this chapter who may be exposed to chemicals covered by this chapter shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for those chemicals. Laborers, on request, shall be provided a copy of a specific MSDS. In addition, laborers shall receive training on the hazards of the chemicals and on measures they can take to protect themselves from those hazards and shall be provided with appropriate personal protective equipment as required by this chapter. These rights are guaranteed on January 1, 1988.
- (b) An employer covered by this chapter may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an agricultural laborer because the laborer has made an inquiry, filed a complaint, assisted an inspector of the department who may make or is making an inspection under Section 125.016 of this code, instituted or caused to be instituted any proceeding under or related to this chapter, testified or is about to testify in such a proceeding, or exercised any rights afforded under this chapter on behalf of the laborer or on behalf of others. Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.
- (c) Any waiver by an agricultural laborer of the benefits or requirements of this chapter is against public policy and is void. Any employer's request or requirement that a laborer waive any rights under this chapter as a condition of employment is a violation of this chapter.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.014. Department Rules; Outreach Program.

- (a) The department may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.
- (b) The department shall develop and provide to each employer covered by this chapter a suitable form of notice providing agricultural laborers with information regarding their rights under this chapter.
- (c) As part of an outreach program, the department shall develop and distribute a supply of informational leaflets on employers' duties, agricultural laborers' rights, the public's ability to obtain information under this chapter, the outreach program, and the effects of chemicals covered by this chapter.
- (d) The department may contract with a public institution of higher education or other public or private organizations to develop and implement the outreach program.
- (e) The department shall publicize the availability of information to answer inquiries from agricultural laborers, employers, or the public in this state concerning the effects of chemicals covered by this chapter.
- (f) In cooperation with the department, an employer covered by this chapter may provide an outreach program in the community.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.015. Liability Under Other Laws.

- (a) The provision of information to an agricultural laborer does not in any way affect the liability of an employer with regard to the health and safety of a laborer or other person exposed to chemicals, nor

docs it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law.

- (b) The provision of information to an agricultural laborer does not affect any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a chemical under any other provision of law.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.016. Complaints, Investigations, And Penalties.

- (a) Complaints received in writing from agricultural laborers or their designated representatives relating to alleged violations of this chapter by employers covered by this chapter shall be investigated in a timely manner by the department as provided by this section.
- (b) Officers or representatives of the department, on presentation of appropriate credentials, have the right of entry into any workplace at reasonable times to inspect and investigate complaints for purposes of determining compliance with this chapter.
- (c) The department shall complete an investigation of a complaint not later than 90 days after the date on which the complaint is filed. A hearing shall be conducted under Section 12.032 and an enforcement order issued, if appropriate, not later than 90 days after the date on which the investigation is completed. If it is necessary to commence an action relating to an alleged violation, the action must be commenced not later than 60 days after the date on which the investigation is completed.
- (d) After providing at least 14 days' written notice and an opportunity for a public hearing, the department may issue an enforcement order requiring any employer or chemical manufacturer covered by this chapter to comply with this chapter or rules adopted under this chapter. A public hearing held under this subsection is a contested case under Chapter 2001, Government Code, and may be appealed under that chapter. In the case of a medical emergency, the department may issue an enforcement order immediately and shall provide the opportunity for a hearing on the order within 10 days after the date on which the order is issued.
- (e) In the case of a medical emergency, the department may sue in the name of the State of Texas to enjoin any violation of this chapter or a rule adopted or enforcement order issued by the department under this chapter.
- (f) If required under this chapter, employers who knowingly disclose false information or negligently fail to disclose a hazard are subject to a civil penalty of not more than \$5,000 per violation. This section does not affect any other right of an agricultural laborer or any other person to receive compensation for damages under other law.
- (g) If required under this chapter, employers who proximately cause an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information are subject to a criminal fine of not more than \$25,000. This section does not affect any other right of an agricultural laborer or any other person to receive compensation for damages under other law.
- (h) The department may request the attorney general to represent the department in any legal proceeding authorized under this chapter. An action for civil or criminal penalties or injunctive relief shall be brought in the county in which the alleged violation occurred or is occurring.
- (i) Each violation of this chapter or a rule adopted under this chapter constitutes a separate offense.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.26, eff. Sept. 1, 1995.

Sec. 125.017. Compliance With Hazard Communication Act.

- (a) If an employer is required to comply with Chapter 502, Health and Safety Code and with this chapter, the employer is required to comply with only the Hazard Communication Act. However, if an agricultural laborer is not covered under the Hazard Communication Act, the employer shall comply with this chapter for those laborers not covered by the Hazard Communication Act.
- (b) If an employer is covered by both the Hazard Communication Act and this chapter, the employer is required to furnish a workplace chemical list under only one of those laws.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(92), eff. Sept. 1, 1991.

Texas Right To Know Regulations

Chapter 8 Agricultural Hazard Communication Regulations

RULE §8.1 General Provisions

- (a) Purposes. The purposes of this chapter is to:
 - (1) provide agricultural workers and their designated representatives with access to information regarding certain hazardous chemicals to which they may be exposed during their normal employment activities, during reasonably foreseeable emergency situations, or as a result of their close proximity to areas where those chemicals are used;
 - (2) provide access to information regarding hazardous chemicals to certain emergency service organizations responsible for dealing with chemical hazards during emergency situations in close proximity to residential areas, to provide the department with access to information regarding chemicals covered by the Act and this chapter, and to provide members of the community with information about hazardous chemicals used or stored in close proximity to their residences; and
 - (3) provide treating medical personnel and authorized persons, including persons conducting epidemiological research, with access to information regarding chemicals covered by the Act and this chapter.
- (b) Compliance with the Hazard Communication Act. A covered employer shall comply with the requirements of the Act and this chapter except insofar as the Hazard Communication Act, Texas Health and Safety Code, Chapter 502, provides equivalent requirements and the covered employer is in compliance with those requirements.
- (c) Compliance with WPS. The department, after review and comparison of the Act, this chapter, and the WPS, has determined that the purpose of all these standards is to protect and communicate possible hazards to which agricultural laborers may be exposed in the workplace. A covered employer shall comply with the requirements of the Act and this chapter. However, if an employer covered by the Act and this chapter complies with applicable provisions of WPS and the following additional and more stringent requirements of this chapter, the employer will be considered to be in compliance with the Act and this chapter:
 - (1) recognizing the use of a designated representative by an agricultural laborer as provided for in the Act and §8.5 of this chapter (relating to Designated Representative);
 - (2) complying with requirements regarding the compilation, maintenance, and provision of the Workplace Chemical List and attachments as provided in §8.7 of this chapter (relating to Workplace Chemical List);

- (3) obtaining a Material Safety Data Sheet from manufacturers and distributors in accordance with §8.6 of this chapter (relating to Material Safety Data Sheet);
- (4) complying with §8.11(f)(3) of this chapter (relating to Training Program) which provides that a covered employer may not refuse to hire a laborer solely because the laborer has not completed a training program or cannot produce a training card;
- (5) providing and reading crop sheets to agricultural laborers in accordance with §8.8(b) of this chapter (relating to Crop Sheets) in absence of training and if they do not have a training card or they request it; and
- (6) complying with notification requirements to the local fire chief about chemicals stored for more than 72 hours as provided in §8.12 of this chapter (relating to Emergency Response).

Source Note: The provisions of this §8.1 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective July 5, 1994, 19 TexReg 4814; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.2 Definitions

In addition to the statutory definitions in the Act and general definitions for Title 4, Part 1 contained within Rule 1.1, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Act**—The Agricultural Hazard Communication Act, Texas Agriculture Code, Chapter 125.
- (2) **Agricultural or horticultural commodity in its unmanufactured state**—An agricultural or horticultural commodity is in its unmanufactured state until the desirable portion of the agricultural plant is detached from its parent or the whole agricultural plant is separated from its growth media and removed from the work area. For horticultural commodities grown at the retail sales site, a commodity is in its unmanufactured state until it is sold and taken from the retail sales site.
- (3) **Covered pesticide chemical**—Any substance containing any element, chemical compound, or mixture of elements or compounds registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §136 et seq. This includes general, restricted, or state-limited-use products as packaged by the manufacturer.
- (4) **Crop sheet**—A document developed by the department to fulfill the requirements of the Act, §125.010.
- (5) **Distribute**—Offer for sale, hold for sale, sell, barter, or supply.
- (6) **Employer**—
 - (A) Any person who:
 - (i) operates an agricultural establishment;
 - (ii) contracts with the operator of an agricultural establishment in advance of, during, or after production to control or purchase a crop and uses a covered pesticide chemical on an agricultural or horticultural commodity in its unmanufactured state; or
 - (iii) either directly or indirectly recruits, solicits, hires, employs, utilizes, furnishes, or supervises agricultural laborers.
 - (B) The term “**agricultural establishment**” as used in this chapter means a business operation that uses paid agricultural laborers in the production of an agricultural or horticultural commodity in its unmanufactured state.

- (C) In no event is a labor agent, crew leader, or labor contractor considered to be an employer for purposes of these regulations of the Act or this chapter. Where a labor agent, crew leader, or labor contractor is used, the employer is the person who uses or engages the services of the labor agent, crew leader, or labor contractor.
- (7) **EPA**—United States Environmental Protection Agency.
- (8) **Farm operator**—The person responsible for the overall control and management of the crop.
- (9) **Livestock**—Beef and dairy cattle, hogs, sheep, goats, poultry of all kinds, horses, rabbits, bees, exotic game animals, and fur-bearing animals in captivity.
- (10) **Medical emergency**—Any health or safety related occurrence in which information concerning a covered pesticide chemical is needed for immediate treatment or diagnosis of an injury or illness that appears to have been caused or aggravated by exposure to agricultural chemicals.
- (11) **Member of the community**—Any individual who resides, is employed, attends school, or is a parent of a child attending school, is treated in a hospital, or resides, or is treated in a nursing home within a one-quarter of a mile radius of a covered employer's work area.
- (12) **Migrant work**—Work performed by an individual who is required to be absent overnight from that individual's permanent place of residence.
- (13) **Nursery worker**—
- (A) A laborer employed in a nursery operation, whether licensed or unlicensed, who is engaged in the following activities:
- (i) sowing seeds and otherwise propagating shrubs, vines, flowers, and fruit, nut, shade, vegetable, and ornamental plants or trees;
 - (ii) handling such plants to and from fields; or
 - (iii) planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.
- (B) A worker involved solely in the retail aspect of a nursery operation or solely in a lawn care service is not considered a nursery worker for purposes of this chapter.
- (14) **Person**—Any individual, partnership, association, joint stock company, trust, cooperative, corporation, or other business entity.
- (15) **Produce**—The act of performing any of the activities specified in the definition of agricultural laborer found in §8.3 of this chapter (relating to Agricultural Laborer).
- (16) **Registrant**—Any person who has submitted an application for registration of a pesticide under the Texas Agriculture Code, Chapter 76, Subchapter C.
- (17) **Safety emergency**—Any health or safety related occurrence designated as a safety emergency by a fire chief or the fire chief's representative.
- (18) **Seasonal work**—Work of a seasonal or temporary nature. A worker who moves from one seasonal activity to another is employed on a seasonal basis even though he may continue to be employed during a major portion of the year. Work is other than seasonal if it is performed for a single employer essentially on a year-round basis.
- (19) **Service**—The Texas A&M AgriLife Extension Service.
- (20) **Store (or storage)**—To have at the work area for a period of time greater than 72 hours.
- (21) **Threshold amount**—55 gallons or 500 pounds as packaged by the registrant or an amount that the department determines by rule for certain highly toxic or dangerous chemicals.
- (22) **Trained trainers**—Anyone who has completed an EPA-approved WPS train-the-trainer program or a WPS-trained handler who may train workers only.

- (23) **Treating medical personnel**—Doctor, nurse, emergency technician, clinic personnel, or hospital personnel treating an individual in connection with a possible exposure to a covered pesticide chemical.
- (24) **Uses**—Uses or causes to be used covered pesticide chemicals, or causes agricultural laborers to be present in a workplace where covered pesticide chemicals are used or stored.
- (25) **Work area**—A room, defined space, field, section, or farm where covered pesticide chemicals are stored or used and where agricultural laborers may be present. In a nursery or greenhouse, the work area is the defined treated or storage area within the nursery or greenhouse in which agricultural laborers are present.
- (26) **Work season**—Crop season.
- (27) **WPS**—The federal Worker Protection Standard, 40 Code of Federal Regulations, Part 170.

Source Note: The provisions of this §8.2 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective July 5, 1994, 19 TexReg 4814; amended to be effective May 15, 2008, 33 TexReg 3733; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.3 Agricultural Laborer

- (a) The terms **"agricultural laborer"** or **"laborer"** as used in this chapter mean an individual who does one or more of the following activities at an agricultural establishment including a farm, a tree or sod farm, ranch, packing shed, greenhouse, or nursery:
 - (1) plants, cultivates, harvests, or handles an agricultural or horticultural commodity in its unmanufactured state. **"Agricultural laborer"** includes, but is not limited to, field workers who plant, weed, thin, cultivate, detassel, hoe, irrigate, harvest, tie vines; nursery workers; workers who load trucks to take the commodity from the field to the packing shed; and workers at the packing shed who handle the commodity;
 - (2) handles a covered pesticide chemical as part of the agricultural laborer's duties at the agricultural establishment, including, but not limited to, mixing, loading, or applying a covered pesticide chemical;
 - (3) risks exposure to a covered pesticide chemical because of the agricultural laborer's duties which includes, but is not limited to, disposal of used pesticide containers on a farm, scouting, and flagging; or
 - (4) plants, cultivates, grows, harvests, detassels, rogues, or treats seeds or seed plants of an agricultural or horticultural commodity.
- (b) The definition of agricultural laborer does not include:
 - (1) farm and ranch laborers working solely with livestock;
 - (2) persons working solely in the retail sales component of a business, such as salespersons, brokers, and marketing personnel;
 - (3) office workers, cooks, maintenance workers, security personnel, and nonresident management, except for purposes of a gross annual payroll determination, unless their job performance routinely involves potential exposure to a covered pesticide chemical;
 - (4) licensed commercial applicators and their employees in the normal circumstances where such an applicator is applying pesticides to the crop of some other entity. Employees of licensed commercial applicators working on an agricultural establishment owned or operated by that applicator are included within the definition of **"agricultural laborer"**; or
 - (5) workers involved in mechanical harvesting in which there is no substantial contact with the treated crop and where the relevant reentry interval has expired.

Source Note: The provisions of this §8.3 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective July 5, 1994, 19 TexReg 4814; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.4 Covered Employer

- (a) An employer is a **“covered employer”** if the employer annually uses or stores in excess of the threshold amount of any one covered pesticide chemical, and either directly, or through labor agents:
- (1) hires agricultural laborers to perform seasonal or migrant work and whose gross annual payroll for those laborers is \$15,000 or more; or
 - (2) hires agricultural laborers for purposes other than seasonal or migrant work and whose gross annual payroll for those laborers is \$50,000 or more.
- (b) An employer is a covered employer if the employer meets the minimum payroll requirements described in subsection (a)(1) or (2) of this section and causes agricultural laborers to be present in a workplace(s) where the threshold amount of any one covered pesticide chemical is annually used or stored. An example of such an employer may be a packing shed or other entity which makes an agreement with a farmer to furnish agricultural laborers to produce a crop being produced at the farmer’s farm. In such instances, the packing shed and the farmer would have the following responsibilities under the Act:
- (1) If the packing shed meets the minimum payroll requirement and covered pesticides in excess of the threshold amount are used or stored in the workplace(s) where the packing shed’s agricultural laborers are present, the packing shed is responsible for complying with the requirements of these regulations for all of its employees that meet the definition of **“agricultural laborer.”**
 - (2) The packing shed’s responsibilities extend only to the agricultural laborers furnished by the packing shed and only to the work area(s) where these laborers are present.
 - (3) If the packing shed causes agricultural laborers to be present at more than one farm or work area, the covered chemicals used or stored at all such work areas will be totaled to determine whether more than the threshold amount is stored or used.
 - (4) The packing shed is free to secure the assistance of others in performing particular responsibilities. For instance, it may use crew leaders or foremen to read the crop sheets and it may arrange for farmers to help compile the workplace chemical lists. However, responsibility for compliance rests solely with the packing shed.
 - (5) The farmer in this example has no responsibility under the Act with respect to the packing shed’s agricultural laborers.
 - (6) The farmer is responsible for complying with the Act only if the farmer standing alone is a covered employer. In other words, the packing shed’s agricultural laborers are not counted in determining whether the farmer meets the minimum payroll test for coverage.
 - (7) Even where the farmer is a covered employer, the farmer’s only responsibility under the Act is with respect to those agricultural laborers whom the farmer has hired directly or through a labor agent.
 - (8) The coverage and responsibility described in this example is the same for other entities which furnish agricultural laborers to perform work on a farmer’s farm, including seed producers who furnish laborers to rogue or detassel a seed crop, canneries or processors who furnish field laborers, and gins who furnish hoeing or weeding laborers.
- (c) Hiring **“through labor agents”** includes an employer who contracts with or utilizes a crew leader or labor contractor to provide harvesters or other agricultural laborers.
- (d) Amounts paid by an employer to a labor agent, crew leader, or labor contractor are considered part of the employer’s gross annual payroll for purposes of subsection (a) of this section.
- (e) Where an employer uses or stores any covered pesticide chemicals in more than one work area or workplace, the total amount used in all such work areas and workplaces shall be counted to determine whether he or she annually uses in excess of the threshold amount.

- (f) An employer who purchases in excess of the threshold amount of a covered pesticide chemical at one time or within a period of one calendar year is presumed to have used or stored in excess of the threshold amount of a covered pesticide chemical.

Source Note: The provisions of this §8.4 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective July 5, 1994, 19 TexReg 4814; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.5 Designated Representative

- (a) Representative designated by written authorization. A designated representative is an individual or organization to whom an agricultural laborer gives written authorization to exercise the laborer's rights under the Act and this chapter.
- (b) Recognized or certified representatives.
- (1) Certified collective bargaining agent. A certified collective bargaining agent is a person or unit that has been sanctioned by a governmental body to represent agricultural laborers in matters of wages and working conditions. A certified collective bargaining agent is not required to have written authorization from the agricultural laborer who the certified collective bargaining agent represents.
 - (2) Recognized collective bargaining agent. A recognized collective bargaining agent is a person or unit that has been acknowledged in a collective bargaining contract between an employer and an agricultural laborer. A recognized collective bargaining agent is not required to have a written authorization from the agricultural laborer who the recognized collective bargaining agent represents in order to exercise the laborer's rights under the Act.
 - (3) Certified designated representative. A certified designated representative is a person who has been approved for certification by the department. In order to become a certified designated representative, an individual or organization shall submit a request for certification as a designated representative to the department. The request shall include the requester's name and address, the name of the agricultural laborer's employer, the address of the agricultural laborer's employer, if known, and a description of which of the laborer rights under the Act the designated representative intends to exercise. The laborer's written authorization shall be attached to the request and processed by the department as follows.
 - (A) The department shall review the request and determine whether to accept or reject it within two business days after receipt. If the department determines that the request fulfills the requirements of the Act and this chapter, the department shall certify the requester as a designated representative. The designated representative remains certified until the agricultural laborer notifies the department that the agricultural laborer has withdrawn authorization. If the department rejects the request, the department shall notify the requester of the decision and give a statement of the reasons for the rejection. A person whose request has been rejected may attempt to address the reasons for rejection and ask that the request be reconsidered. Alternatively, the requester may appeal the rejection to the commissioner. A person not satisfied with the decision of the commissioner may appeal in the manner provided for contested cases under the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.
 - (B) A certified designated representative is not required to reveal to anyone other than the department the identity of the agricultural laborer represented. The department shall maintain the laborer's anonymity, unless the laborer waives it.
 - (C) A covered employer shall recognize a requester as a designated representative after receiving notice of certification by the department.

Source Note: The provisions of this §8.5 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective July 5, 1994, 19 TexReg 4814; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.6 Material Safety Data Sheet

- (a) Defined. Generally referred to as a "safety data sheet" (SDS), a material safety data sheet is a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) standard for that document. In the case of a chemical labeled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §§136 et seq., for which an SDS is both unavailable and not required under the federal OSHA hazard communication standard, a product label, or other document equivalent to an SDS, which contains precautionary statements, such as hazards to humans and domestic animals, and environmental, physical, or chemical hazards, including warning statements, may serve as an SDS.
- (b) Responsibilities of manufacturers and distributors.
- (1) A registrant, chemical manufacturer, or distributor shall provide the most current appropriate SDS, product label, or equivalent documentation to any person in this state to whom he distributes a covered pesticide chemical.
 - (2) A chemical manufacturer or distributor shall provide, in a timely manner, the most current appropriate SDS to covered employers upon request.
 - (3) A registrant or chemical manufacturer shall ensure that all SDSs for all covered pesticide chemicals that entity distributes are correct and current.
 - (4) A registrant shall provide with the registration application a copy of the most current appropriate SDS for each pesticide for which the registrant is applying for registration.
 - (5) A chemical manufacturer or distributor shall submit to the department a copy of the most current appropriate SDS for all fertilizers with covered pesticide chemicals.
 - (6) Retail outlets that distribute pesticide chemicals to the general public only for nonagricultural purposes are exempted from this section.
- (c) Responsibilities of covered employers.
- (1) A covered employer is responsible for obtaining and maintaining the most current appropriate SDS, product label, or equivalent documentation for each covered pesticide chemical the covered employee buys, applies, or causes another to apply.
 - (2) A covered employer who has not been provided with an SDS for a covered pesticide chemical shall request the most current appropriate SDS product label, or equivalent documentation in writing from the manufacturer or distributor in a timely manner.
 - (3) A covered employer shall make an SDS, product label, or equivalent documentation for covered pesticide chemicals accessible to agricultural laborers, designated representatives, treating medical personnel, members of the community, the department, and emergency personnel in the same manner as the workplace chemical list is to be made accessible to those persons in §8.7(c) of this chapter (relating to Workplace Chemical List).

Source Note: The provisions of this §8.6 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.7 Workplace Chemical List

- (a) Defined. A workplace chemical list (WCL) is a form that must be completed with the information required by the Act, § 125.004-.005. In order to determine whether the covered pesticide chemical must be listed, a covered employer shall total the quantities of pesticide products containing the same active ingredient to determine whether more than the threshold amount of any covered pesticide chemical is actually used or stored annually in the workplace. In order to determine total quantities when both liquid and dry formulations of a covered pesticide chemical have been used or stored, the covered employer shall convert pounds to gallons or gallons to pounds using the ratio 9.09 pounds/gallon or .11 gallon/pound. The following documents or information shall be attached to the workplace chemical list:

- (1) the material safety data sheet, generally referred to as the "safety data sheet" (SDS) for each chemical listed on the workplace chemical list, or in the case for which an SDS is both unavailable and not required under the federal Occupational Health and Safety Administration hazard communication standard, a product label, or equivalent documentation;
 - (2) crop sheets and other health and safety data provided by the department that the covered employer has been required to distribute to the covered employer's agricultural laborers; and
 - (3) an estimate of the amount of the product applied and estimate of the number of acres treated. The department's workplace chemical list form will include a space in which the covered employer may provide this information.
- (b) Responsibility to compile and maintain a workplace chemical list.
- (1) The department shall prescribe a form for the workplace chemical list required by the Act. The form shall include places in which a covered employer shall list the name of the crop(s), the product name of all covered pesticide chemicals that are applied to the crop and/or stored at the workplace in excess of the threshold amount, the locations and dates of the application of all covered pesticide chemicals used, and the storage locations of the covered pesticide chemicals at the workplace. The department may approve a computerized format if the format fulfills the requirements of the Act.
 - (2) A covered employer shall compile and maintain a workplace chemical list for covered pesticide chemicals as specified in subsection (a) of this section.
 - (3) The covered employer may choose to maintain a single list for each crop, each work area, or each workplace, provided that the list contains sufficient information to identify the date and location of pesticide application(s) and the name(s) of the pesticide(s) applied.
 - (4) If the list is compiled by workplace containing various work areas in different counties, copies of the list shall be kept at the place of business closest to the work area.
 - (5) The covered employer is responsible for obtaining the workplace chemical list form from a department regional office or the department website and is not relieved of these duties under the Act and this chapter because he or she has not received a form from the department.
 - (6) A covered employer's responsibility to maintain a workplace chemical list includes the entering of information regarding the application of covered pesticide chemicals as they are applied, used, or stored in excess of the amounts specified in subsection (a) of this section.
 - (7) The covered employer shall either:
 - (A) maintain workplace chemical lists and attachments at the principal place of business in Texas for 30 years; or
 - (B) file workplace chemical lists and attachments with the department annually.
 - (8) Any covered employer who wishes to file these records with the department shall include the covered employer's identification number. Records should be sent to the Texas Department of Agriculture, Pesticide Program, P.O. Box 12847, Austin, Texas 78711. Records for each calendar year shall be filed by January 31 of the following year. The department shall issue a receipt acknowledging records have been received from the covered employer.
 - (9) If the department determines that a covered employer repeatedly fails to maintain the workplace chemical list and its attachments as required, the department may require the covered employer to file annually the list and attachments with the department.
 - (10) If a workplace ceases to be used for the agricultural activities for which the workplace chemical list and attachments are required, the covered employer shall send the workplace chemical lists and attachments to the Texas Department of Agriculture, Pesticide Program, P.O. Box 12847, Austin, Texas 78711.

- (11) If the agricultural activities for which the workplace chemical list and attachments are maintained continue at a workplace but the covered employer is succeeded or replaced in function by another person, the successor shall comply with the provisions of this subsection. The successor is not liable for violations of the Act or this chapter committed by his predecessor unless the transaction(s) leading to the transfer were undertaken for the purpose of avoiding responsibility for violations of the Act or this chapter.
 - (12) A licensed commercial applicator may satisfy the obligations to keep records under the Texas Agriculture Code, §76.114, and §7.33 of this title (relating to Records of Application, and to maintain the workplace chemical list by maintaining a single record, provided that the records maintained comply with all of the requirements of this section as well as of §7.33 of this title (relating to Records of Application). The department will develop a form for the workplace chemical list which satisfies the recordkeeping requirements for applicators.
- (c) Access to the workplace chemical list.
- (1) A covered employer shall make the workplace chemical list and attachments accessible to an agricultural laborer, a designated representative, treating medical personnel, or a member of the community. The term "accessible" as used in this chapter means:
 - (A) in nonemergency situations, the term "accessible" means that the document or information shall be provided to a requester for reading or copying, within a reasonable period of time, but in no event more than five normal working days from the time of a reasonable request. The term "reasonable request" as used in this section means a request made orally or in writing either directly to the covered employer, a managerial or supervisory employee employed by the covered employer's place of business, or an employee designated by the covered employer to receive such requests during normal working hours at the workplace or the employer's place of business;
 - (B) in the case of a medical or safety emergency, the term "accessible" means that the document or information shall be given immediately to requester authorized by the Act and this chapter regardless of when the request is made.
 - (2) A designated representative or treating medical personnel is not required to identify the agricultural laborer being represented or treated.
 - (3) Before a covered employer allows an agricultural laborer to work with a covered pesticide chemical or in a work area where a covered pesticide chemical is used or stored, the covered employer shall inform the agricultural laborer orally or in writing of the existence of the workplace chemical list and its location.
 - (4) If the covered employer has filed the workplace chemical list with the department, the covered employer shall inform the requester that the requested workplace chemical list is available from the department and provide the department's contact information.
 - (5) If a covered employer refuses to make accessible the workplace chemical list and attachments to a designated representative, treating medical personnel, or member of the community, that person may notify the appropriate regional office of the department of the request and of the covered employer's refusal.
 - (6) When the department is notified that a covered employer has refused to provide a copy of the workplace chemical list and attachments to a designated representative, or member of the community, the department shall, within two working days from the day of receiving the notice, request the covered employer to provide the department with the list and attachments. The department's request to the covered employer may be either oral or written.

- (7) If the department, on behalf of a designated representative, requests a copy of the workplace chemical list and attachments from the covered employer, the covered employer shall provide the copy to the department within 24 hours of the request.
 - (8) If the department, on behalf of a member of the community, requests a copy of the workplace chemical list and attachments from the covered employer, the covered employer shall provide the copy to the department within 14 days of the request.
 - (9) A covered employer may not refuse to provide the workplace chemical list form and attachments to an employee or treating medical personnel.
- (d) Department workplace chemical list files.
- (1) The department may request a copy of any workplace chemical list and attachments from any covered employer.
 - (2) The department shall maintain and preserve the data from each workplace chemical list and attachments filed for 30 years.
 - (3) The department shall make this data available upon request to an agricultural laborer, designated representative, member of the community, treating medical personnel, and other medical and health care personnel.

Source Note: The provisions of this §8.7 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective July 5, 1994, 19 TexReg 4814; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.8 Crop Sheets

- (a) Development of crop sheets.
- (1) The department shall develop crop sheets which contain information relevant to specific crops including pesticides most commonly used on the crops, the acute and chronic health effects of these pesticides, ways to minimize pesticide exposure, recommended medical emergency measures, and agricultural laborers' rights.
 - (2) For purposes of developing crop sheets and complying with other provisions of the Act and this chapter, the department will consider each of the following logical groupings to be a single crop:
 - (A) nursery stock; and
 - (B) citrus.
 - (3) The information on crop sheets shall be provided in both English and Spanish.
 - (4) The department may provide crop sheets in other languages commonly used by agricultural laborers who work with a particular crop.
 - (5) The department shall annually provide to each covered employer copies of appropriate crop sheets for crops grown in the relevant region. If a covered employer has not received a crop sheet for any crop that he grows, the covered employer shall request appropriate crop sheets from the local regional office of the department or the Service.
 - (6) The department shall update and distribute crop sheets as significant new information becomes available.
- (b) Providing and reading crop sheets to laborers.
- (1) A covered employer shall provide an appropriate crop sheet and ensure that the information on the crop sheet designated by the department is read to each agricultural laborer including each laborer assigned to a new crop. This information shall be read in either Spanish or English, as appropriate. The most current crop sheets for the crops the laborer will be working with shall be provided and read on the first day of the work season or the first day the laborer begins employment, whichever is later. For nursery or greenhouse workers, the work season shall be

deemed to run from January 1 to December 31 of each calendar year. The covered employer shall provide and ensure that the appropriate information on crop sheet is read prior to the time the laborer begins to work.

- (2) A covered employer may comply with the obligation under paragraph (1) of this subsection to ensure that the appropriate information is read by playing to the laborers a tape recording of the information which is required to be read.
 - (3) A covered employer shall inform those agricultural laborers to whom the covered employer is required to read a crop sheet, including each laborer who is assigned to a different crop or job, of the product name of the covered pesticide chemical, the date and time it was last applied or is scheduled to be applied to the work area, and the expiration date of its reentry interval, except that such information is not required to be provided to those agricultural laborers who are not field laborers. An example of this type of agricultural laborer is a packing shed worker that works only in the shed.
 - (4) A covered employer does not have to provide or read the crop sheet or provide the information described in paragraph (3) of this subsection to agricultural laborer who has a card issued under the Act, §125.009(g), except that the crop sheet is required to be provided to any agricultural laborer upon request.
 - (5) A covered employer shall provide crop sheets and the information described in paragraph (3) of this subsection to any agricultural laborer upon request.
 - (6) A covered employer may comply with the requirements of paragraph (1) of this subsection for its agricultural laborers who are not field workers by posting in a conspicuous place at the work area a replica of the crop sheets for crops which are handled by those laborers. The posters must be at least 14 inches by 22 inches and must contain all of the information included on the crop sheet(s) for crops handled by those laborers.
- (c) A covered employer shall offer to each agricultural laborer, on the day on which the laborer is first paid for that work season, basic safety and health-related information provided to the employer by the department.

Source Note: The provisions of this §8.8 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.9 Providing Protective Clothing, Equipment, and Devices

A covered employer shall provide for use and at no cost to each agricultural laborer employed by the covered employer any protective clothing, equipment, or device that is specified on the label for the activities in which the agricultural laborer is engaged as part of the agricultural laborer's duties. If the label does not specify protective clothing, then the covered employer shall provide the protective clothing, equipment, or device specified in the most current appropriate material safety data sheet (generally referred to as the safety data sheet), crop sheet, or as provided in Chapter 7, Subchapter D of this title (relating to Use and Application), whichever is more protective. This section does not require that the covered employer provide the long sleeve shirts, pants, shoes, and socks customarily provided by the agricultural laborers.

Source Note: The provisions of this §8.9 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.10 Retaliation

- (a) A covered employer, employer's representative, labor agent, or crew leader may not take any retaliatory actions against any agricultural laborer because the laborer has made an inquiry, filed a complaint, assisted the department's inspectors, instituted any proceeding under or related to the Act or this chapter, testified or is about to testify in such a proceeding, or exercised any rights

afforded under the Act or this chapter on behalf of the agricultural laborer or on behalf of others. Under this section, retaliatory actions include discharge, causing to be discharged, discipline, or adversely affecting the agricultural laborer's pay, position, seniority, or other benefits.

- (b) An employer may not ask or require an agricultural laborer, as a condition of employment, to waive any rights under the Act and this chapter.

Source Note: The provisions of this §8.10 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.11 Training Program

- (a) Development of training program. The department, in conjunction with the service, shall develop an ongoing training program for agricultural laborers.
- (b) Training provided by the department.
 - (1) The department shall provide the training program in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture.
 - (2) The department shall provide training in the following additional counties which it has determined as having a significant farm labor work force: Bexar, Cameron, Castro, Dawson, Deaf Smith, Erath, Floyd, Fort Bend, Frio, Gonzales, Hale, Hockley, Lamb, Lubbock, McLennan, Matagorda, Milam, Pecos, Starr, Terry, Uvalde, Van Zandt, Waller, Willacy, and Zavala.
 - (3) As part of the training program, and when possible, the department shall provide agricultural laborers with appropriate crop sheets and reentry information.
- (c) Training provided by the Service. The Service shall provide training in all remaining counties.
- (d) Notification of training. The department or the Service shall notify agricultural laborers on a regular basis of the availability of training programs.
- (e) Training provided by others. For purposes of these regulations and the Act, §125.009(e), covered employers and their managers or their labor contractors may train employees if the covered employers and their managers or labor contractors are certified applicators or trained trainers.
 - (1) Agricultural laborers trained in a state other than Texas, and possessing a current EPA WPS training verification card, will be considered trained for purposes of the Act and these regulations.
 - (2) Worker training programs which meet the minimum requirements of the WPS worker training are approved for workers who work under conditions specified under WPS, 40 CFR Part 170.130. Workers having completed this training are considered trained under the Act and these regulations.
 - (3) Handler training programs which meet the minimum requirements of the WPS handler training are approved for handlers who work under conditions specified under WPS 40 CFR Part 170.230. Handlers having completed this training are considered trained under the Act and these regulations.
- (f) Certification of completion of training.
 - (1) When an agricultural laborer completes a training program, the trainer shall provide the agricultural laborer with an EPA training verification card for WPS training.
 - (2) The training agency and the training individual shall comply with the following requirements:
 - (A) maintain a record for five years of all agricultural laborers who complete the training program and are given a department-issued EPA WPS training verification card. These records must include at least a copy of each dated class roster signed by the trainer and each trainee, showing the verification card number issued to the trainee, and the city or county and state where the training occurred;

- (B) issue EPA WPS training verification cards only to trainees who have been trained in accordance with the requirements of the WPS, including the correct use of training materials developed or approved by EPA;
 - (C) record trainee information on the verification cards, in ink or other indelible form;
 - (D) issue EPA WPS training verification cards that match EPA specifications or that comply with state variations from such specifications that have prior approval from EPA; and
 - (E) promptly respond to requests from EPA, state or tribal agencies or covered employers for information concerning issued EPA WPS training verification cards.
- (3) A covered employer shall not refuse to hire an agricultural laborer solely because the laborer has not completed a training program or cannot produce a card.
- (g) Access to training materials by covered employers.
- (1) The department shall prepare appropriate training materials for covered employers, their managers, and their labor contractors to be used for training purposes. For the purposes of compliance with these regulations, the department has determined that the EPA WPS training program for agricultural workers and pesticide handlers meets or in some instances exceeds training requirements of the Act and these regulations.
 - (2) These training materials may be obtained from sources identified and approved by EPA for use in WPS trainings.

Source Note: The provisions of this §8.11 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective July 5, 1994, 19 TexReg 4814; amended to be effective May 15, 2008, 33 TexReg 3733; amended to be effective February 13, 2023, 48 TexReg 655

RULE §8.12 Emergency Response

- (a) Covered employers.
- (1) A covered employer who normally stores covered pesticide chemicals within one-quarter of a mile of a residential area composed of three or more private dwellings shall provide to the fire chief of the fire department having jurisdiction over the storage place the name(s) and telephone number(s) of a knowledgeable representative(s) of the covered employer who can be contacted for further information, or in case of an emergency. This information shall be in writing.
 - (2) A covered employer, upon reasonable request, shall provide a copy of the workplace chemical list and attachments to the fire chief having jurisdiction over the storage place.
 - (3) A covered employer shall notify the fire chief of any significant changes in any workplace chemical list including changes in the types of covered pesticide chemicals being stored, a substantial increase in the volume of covered pesticide chemicals, a change in the storage location of covered pesticide chemicals, or a change in the identity of the employer's representative.
 - (4) A covered employer shall allow the fire chief having jurisdiction over the storage place, or the fire chiefs representative, upon reasonable request, to conduct on-site inspections of the chemicals on the workplace chemical list to prepare fire department emergency response activities.
- (b) Other farm operators and other entities.
- (1) Farm operators who are not covered employers and other entities who normally store covered pesticide chemicals in an amount in excess of the threshold amount within one-quarter of a mile of a residential area composed of three or more private dwellings shall provide to the fire chief having jurisdiction over the storage area, in writing, the name(s) and telephone number(s) of a knowledgeable representative(s) of the farm operator or other entity who can be contacted for further information, or in case of an emergency. The threshold amount shall be based upon the sum of all covered pesticide chemicals normally stored.

- (2) Entities covered by this provision include other farm operators who are not covered employers, commercial and noncommercial applicators, pesticide dealers, chemical manufacturers, chemical distributors, and storage facilities.

Source Note: The provisions of this §8.12 adopted to be effective February 14, 1989, 14 TexReg 617; amended to be effective February 13, 2023, 48 TexReg 655

Part 170 – Worker Protection Standard

Subpart A – General Provisions

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For more information, contact: group.pesticide-safety@epa.gov

SOURCE: 57 FR 38151, Aug. 21, 1992, unless otherwise noted.

§ 170.1 Scope and purpose.

This part contains a standard designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies.

§ 170.2 Implementation and expiration dates.

- (a) Implementation date. Beginning January 2, 2017, the requirements of §170.301 through §170.609 of this part shall apply to any pesticide product that bears the statement "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170".
- (b) Expiration date. Sections 170.1 through 170.260 of this part shall expire on, and will no longer be effective after January 2, 2017.

[80 FR 67556, Nov. 2, 2015]

§ 170.3 Definitions.

Terms used in this part have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this part, shall have the following meanings:

Agricultural employer means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

Agricultural establishment means any farm, forest, nursery, or greenhouse.

Agricultural plant means any plant grown or maintained for commercial or research purposes and includes, but is not limited to, food, feed, and fiber plants; trees; turfgrass; flowers, shrubs; ornamentals; and seedlings.

Chemigation means the application of pesticides through irrigation systems.

Commercial pesticide handling establishment means any establishment, other than an agricultural establishment, that:

- (1) Employs any person, including a self-employed person, to apply on an agricultural establishment, pesticides used in the production of agricultural plants.
- (2) Employs any person, including a self-employed person, to perform on an agricultural establishment, tasks as a crop advisor.

Crop advisor means any person who is assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks.

Early entry means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

Farm means any operation, other than a nursery or forest, engaged in the outdoor production of agricultural plants.

Forest means any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products.

Fumigant means any pesticide product that is a vapor or gas, or forms a vapor or gas on application, and whose method of pesticidal action is through the gaseous state.

Greenhouse means any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with nonporous covering and that is of sufficient size to permit worker entry. This term includes, but is not limited to, polyhouses, mushroom houses, rhubarb houses, and similar structures. It does not include such structures as malls, atriums, conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modification.

Hand labor means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) that may contain pesticide residues. These activities include, but are not limited to, harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field. Hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing the tasks of crop advisors.

Handler means any person, including a self-employed person:

- (1) Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which subpart C of this part applies and who is:
 - (i) Mixing, loading, transferring, or applying pesticides.
 - (ii) Disposing of pesticides or pesticide containers.
 - (iii) Handling opened containers of pesticides.
 - (iv) Acting as a flagger.
 - (v) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.
 - (vi) Assisting with the application of pesticides.
 - (vii) Entering a greenhouse or other enclosed area after the application and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by this part (§ 170.110(c)(3)) or in the labeling has been met:
 - (A) To operate ventilation equipment.
 - (B) To adjust or remove coverings used in fumigation.
 - (C) To monitor air levels.

- (viii) Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.
- (ix) Performing tasks as a crop advisor:
 - (A) During any pesticide application.
 - (B) Before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by this part (§ 170.110(c)(3)) or in the labeling has been met.
 - (C) During any restricted-entry interval.
- (2) The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent.

Handler employer means any person who is self-employed as a handler or who employs any handler, for any type of compensation.

Immediate family includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters.

Nursery means any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. Such plants include, but are not limited to, flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod.

Owner means any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered by this part. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this part.

Restricted-entry interval means the time after the end of a pesticide application during which entry into the treated area is restricted.

Treated area means any area to which a pesticide is being directed or has been directed.

Worker means any person, including a self-employed person, who is employed for any type of compensation and who is performing activities relating to the production of agricultural plants on an agricultural establishment to which subpart B of this part applies. While persons employed by a commercial pesticide handling establishment are performing tasks as crop advisors, they are not workers covered by the requirements of subpart B of this part.

§ 170.7 General duties and prohibited actions.

- (a) *General duties.* The agricultural employer or the handler employer, as appropriate, shall:
 - (1) Assure that each worker subject to subpart B of this part or each handler subject to subpart C of this part receives the protections required by this part.
 - (2) Assure that any pesticide to which subpart C of this part applies is used in a manner consistent with the labeling of the pesticide, including the requirements of this part.
 - (3) Provide, to each person who supervises any worker or handler, information and directions sufficient to assure that each worker or handler receives the protections required by this part. Such information and directions shall specify which persons are responsible for actions required to comply with this part.
 - (4) Require each person who supervises any worker or handler to assure compliance by the worker or handler with the provisions of this part and to assure that the worker or handler receives the protections required by this part.

- (b) *Prohibited actions.* The agricultural employer or the handler employer shall not take any retaliatory action for attempts to comply with this part or any action having the effect of preventing or discouraging any worker or handler from complying or attempting to comply with any requirement of this part.

§ 170.9 Violations of this part.

- (a) Under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) (FIFRA) section 12(a)(2)(G) it is unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." When this part is referenced on a label, users must comply with all of its requirements except those that are inconsistent with product-specific instructions on the labeling. For the purposes of this part, EPA interprets the term "use" to include:
- (1) Preapplication activities, including, but not limited to:
 - (i) Arranging for the application of the pesticide;
 - (ii) Mixing and loading the pesticide; and
 - (iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of handlers, decontamination, use and care of personal protective equipment, emergency information, and heat stress management.
 - (2) Application of the pesticide.
 - (3) Post-application activities necessary to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus 30 days. These activities include, but are not limited to, responsibilities related to worker training, notification, and decontamination.
 - (4) Other pesticide-related activities, including, but not limited to, providing emergency assistance, transporting or storing pesticides that have been opened, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.
- (b) A person who has a duty under this part, as referenced on the pesticide product label, and who fails to perform that duty, violates FIFRA section 12(a)(2)(G) and is subject to a civil penalty under section 14. A person who knowingly violates section 12(a)(2)(G) is subject to section 14 criminal sanctions.
- (c) FIFRA section 14(b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships.
- (d) The requirements of this part, including the decontamination requirements, shall not, for the purposes of section 653(b)(1) of title 29 of the U.S. Code, be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the OSHA Field Sanitation Standard, 29 CFR 1928.110, or other agricultural, nonpesticide hazards.

Subpart B—Standard for Workers

Sec. 170.102 Applicability of this subpart.

Except as provided by Secs. 170.103 and 170.104, this subpart applies when any pesticide product is used on an agricultural establishment in the production of agricultural plants.

[60 FR 21952, May 3, 1995]

§ 170.103 Exceptions

Exceptions.

This subpart does not apply when any pesticide is applied on an agricultural establishment in the following circumstances:

- (a) For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.
- (b) On livestock or other animals, or in or about animal premises.
- (c) On plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses.
- (d) On plants that are in ornamental gardens, parks, and public or private lawns and grounds that are intended only for aesthetic purposes or climatic modification.
- (e) By injection directly into agricultural plants. Direct injection does not include "hack and squirt," "frill and spray," chemigation, soil-incorporation, or soil-injection.
- (f) In a manner not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, and pasture and rangeland use.
- (g) For control of vertebrate pests.
- (h) As attractants or repellents in traps.
- (i) On the harvested portions of agricultural plants or on harvested timber; and
- (j) For research uses of unregistered pesticides.

[57 FR 38151, Aug. 21, 1992. Redesignated at 60 FR 21952, May 3, 1995]

Sec. 170.104 Exemptions.

The workers listed in this section are exempt from the specified provisions of this subpart.

(a) *Owners of agricultural establishments.*

- (1) The owner of an agricultural establishment is not required to provide to himself or members of his immediate family who are performing tasks related to the production of agricultural plants on their own agricultural establishment the protections of:
 - (i) Section 170.112(c)(5) through (9).
 - (ii) Section 170.112(c)(5) through (9) as referenced in §§ 170.112(d)(2)(iii) and 170.112(e).
 - (iii) Section 170.120.
 - (iv) Section 170.122.
 - (v) Section 170.130.
 - (vi) Section 170.135.
 - (vii) Section 170.150.
 - (viii) Section 170.160.
- (2) The owner of the agricultural establishment must provide the protections listed in paragraph (a)(1)(i) through (viii) of this section to other workers and other persons who are not members of his immediate family.

(b) *Crop advisors.*

- (1) Provided that the conditions of paragraph (b)(2) of this section are met, a person who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal lead agency for pesticide enforcement, and persons performing crop advising tasks under such qualified crop advisor's direct supervision, are exempt from the provisions of:
 - (i) Section 170.150.
 - (ii) Section 170.160.

A person is under the direct supervision of a crop advisor when the crop advisor exerts the supervisory controls set out in paragraphs (b)(2)(iii) and (iv) of this section. Direct supervision does not require that the crop advisor be physically present at all times, but the crop advisor must be readily accessible to the employees at all times.

(2) *Conditions of exemption.*

- (i) The certification or licensing program requires pesticide safety training that includes, at least, all the information in Sec. 170.230(c)(4).
- (ii) Applies only when performing crop advising tasks in the treated area.
- (iii) The crop advisor must make specific determinations regarding the appropriate personal protective equipment, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his direct supervision in a language that the person understands.
- (iv) Before entering a treated area, the certified or licensed crop advisor must inform, through an established practice of communication, each person under his direct supervision of the pesticide product and active ingredient(s) applied, method of application, time of application, the restricted entry interval, which tasks to undertake, and how to contact the crop advisor.

[60 FR 21952, May 3, 1995, as amended at 73 FR 75598, Dec. 12, 2008]

170.110 Restrictions associated with pesticide applications.

- (a) *Farms and forests.* During the application of any pesticide on a farm or in a forest, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the treated area.
- (b) *Nurseries.*
In a nursery, during any pesticide application described in column A of Table 1 of this paragraph, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the area specified in column B of Table 1 of this paragraph. After the application is completed, until the end of any restricted-entry interval, the entry-restricted area is the treated area.

Table 1. Entry-Restricted Areas In Nurseries During Pesticide Applications

A. During Application of a Pesticide:	B. Workers are Prohibited in:
(1) (a) Applied: <ul style="list-style-type: none"> (i) Aerially, or (ii) In an upward direction, or (iii) Using a spray pressure greater than 150 psi, or (b) Applied as a: <ul style="list-style-type: none"> (i) Fumigant, or (ii) Smoke, or (iii) Mist, or (iv) Fog, or (v) Aerosol. 	Treated area plus 100 feet in all directions on the nursery
(2) (a) Applied downward using: <ul style="list-style-type: none"> (i) A height of greater than 12 inches from the planting medium, or (ii) A fine spray, or (iii) A spray pressure greater than 40 psi and less than 150 psi. (b) Not as in 1 or 2(a) above but for which a respiratory protection device is required for application by the product labeling.	Treated area plus 25 feet in all directions on the nursery
(3) Applied otherwise	Treated area

(c) *Greenhouses.*

- (1) When a pesticide application described in column A of Table 2 under paragraph (c)(4) of this section takes place in a greenhouse, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the area specified in column B of Table 2 until the time specified in column C of Table 2 has expired.
- (2) After the time specified in column C of Table 2 under paragraph (c)(4) of this section has expired, until the expiration of any restricted-entry interval, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area as specified in column D of Table 2 under paragraph (c)(4) of this section, except as provided in § 170.112.
- (3) When column C of Table 2 under paragraph (c)(4) of this section specifies that ventilation criteria must be met, ventilation shall continue until the air concentration is measured to be equal to or less than the inhalation exposure level the labeling requires to be achieved. If no inhalation exposure level is listed on the labeling, ventilation shall continue until after:
 - (i) Ten air exchanges are completed; or
 - (ii) Two hours of ventilation using fans or other mechanical ventilating systems; or
 - (iii) Four hours of ventilation using vents, windows or other passive ventilation; or
 - (iv) Eleven hours with no ventilation followed by 1 hour of mechanical ventilation; or
 - (v) Eleven hours with no ventilation followed by 2 hours of passive ventilation; or
 - (vi) Twenty-four hours with no ventilation.
- (4) The following Table 2 applies to paragraphs (c)(1), (2), and (3) of this section.

Table 2. Greenhouse Entry Restrictions Associated With Pesticide Applications

A. When a Pesticide is Applied:	B. Workers are Prohibited in:	C. Until:	D. After the Expiration of Time in Column C Until the Restricted-Entry Interval Expires, the Entry-Restricted Area is:
(1) As a fumigant	Entire greenhouse plus any adjacent structure that cannot be sealed off from the treated area	The ventilation criteria of paragraph (c)(3) of this section are met	No entry restrictions after criteria in column C are met
(2) As a (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) Aerosol	Entire enclosed area	The ventilation criteria of paragraph (c)(3) of this section are met	Entire enclosed area is the treated area
(3) Not in 1 or 2 above, and for which a respiratory protection device is required for application by the product labeling	Entire enclosed area	The ventilation criteria of paragraph (c)(3) of this section are met	Treated area
(4) Not in 1, 2, or 3 above, and: (i) From a height of greater than 12 in. from the planting medium, or (ii) As a fine spray, or (iii) Using a spray pressure greater than 40 psi	Treated area plus 25 feet in all directions in the enclosed area	Application is complete	Treated area
(5) Otherwise	Treated area	Application is complete	Treated area

§ 170.112 Entry restrictions.*(a) General restrictions.*

- (1) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.
- (2) Entry-restricted areas in greenhouses are specified in column D in Table 2 under §170.110(c)(4).
- (3) When two or more pesticides are applied at the same time, the restricted-entry interval shall be the longest of the applicable intervals.
- (4) The agricultural employer shall assure that any worker who enters a treated area under a restricted-entry interval as permitted by paragraphs (c), (d), and (e) of this section uses the personal protective equipment specified in the product labeling for early-entry workers and follows any other requirements on the pesticide labeling regarding early entry.

- (b) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer assures that both of the following are met:
- (1) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants; and
 - (2) No such entry is allowed until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by §170.110(c)(3) or in the labeling have been met.
- (c) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities if the agricultural employer assures that the following requirements are met:
- (1) No hand labor activity is performed.
 - (2) The time in treated areas under a restricted-entry interval for any worker does not exceed 1 hour in any 24-hour period.
 - (3) No such entry is allowed for the first 4 hours following the end of the application, and no such entry is allowed thereafter until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by §170.110(c)(3) or in the labeling have been met.
 - (4) The personal protective equipment specified on the product labeling for early entry is provided to the worker. Such personal protective equipment shall conform to the following standards:
 - (i) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.
 - (ii) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.
 - (iii) When “**chemical-resistant**” personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.
 - (iv) When “**waterproof**” personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.
 - (v) When a “**chemical-resistant suit**” is specified by the product labeling, it shall be a loose-fitting, one- or two-piece, chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.
 - (vi) When “**coveralls**” are specified by the product labeling, they shall be a loose-fitting, one- or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a chemical-resistant suit is substituted for coveralls, it need not be worn over a layer of clothing.
 - (vii) (A) Gloves shall be of the type specified by the product labeling. Gloves made of leather, cotton, or other absorbent materials must not be worn for early-entry activities, unless gloves made of these materials are listed as acceptable for such use on the product labeling. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, leather gloves may be worn on top of chemical-resistant gloves.

However, once leather gloves have been worn for this use, they shall not be worn thereafter for any other purpose, and they shall only be worn over chemical-resistant gloves.

- (B) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.
 - (C) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.
- (viii) When “**chemical-resistant footwear**” is specified by the product labeling, it shall be one of the following types of footwear: chemical-resistant shoes, chemical-resistant boots, or chemical-resistant shoe coverings worn over shoes or boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain.
 - (ix) When “**protective eyewear**” is specified by the product labeling, it shall be one of the following types of eyewear: goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.
 - (x) When “**chemical-resistant headgear**” is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.
- (5) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use.
 - (6) The agricultural employer shall assure that:
 - (i) Workers wear the personal protective equipment correctly for its intended purpose and use personal protective equipment according to manufacturer’s instructions.
 - (ii) Before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.
 - (iii) Personal protective equipment that cannot be cleaned properly is disposed of in accordance with any applicable Federal, State, and local regulations.
 - (iv) All personal protective equipment is cleaned according to manufacturer’s instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.
 - (v) Before being stored, all clean personal protective equipment is dried thoroughly or is put in a well-ventilated place to dry.

- (vi) Personal protective equipment contaminated with pesticides is kept separately and washed separately from any other clothing or laundry.
 - (vii) Any person who cleans or launders personal protective equipment is informed that such equipment may be contaminated with pesticides, of the potentially harmful effects of exposure to pesticides, and of the correct way(s) to handle and clean personal protective equipment and to protect themselves when handling equipment contaminated with pesticides.
 - (viii) All clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.
 - (ix) Each worker is instructed how to put on, use, and remove the personal protective equipment and is informed about the importance of washing thoroughly after removing personal protective equipment.
 - (x) Each worker is instructed in the prevention, recognition, and first aid treatment of heat-related illness.
 - (xi) Workers have a clean place(s) away from pesticide-storage and pesticide-use areas for storing personal clothing not in use; putting on personal protective equipment at the start of any exposure period; and removing personal protective equipment at the end of any exposure period.
- (7) When personal protective equipment is required by the labeling of any pesticide for early entry, the agricultural employer shall assure that no worker is allowed or directed to perform the early-entry activity without implementing, when appropriate, measures to prevent heat-related illness.
- (8) During any early-entry activity, the agricultural employer shall provide a decontamination site in accordance with §170.150.
- (9) The agricultural employer shall not allow or direct any worker to wear home or to take home personal protective equipment contaminated with pesticides.
- (d) *Exception for an agricultural emergency.*
- (1) An "agricultural emergency" means a sudden occurrence or set of circumstances which the agricultural employer could not have anticipated and over which the agricultural employer has no control, and which requires entry into a treated area during a restricted-entry interval, when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement cannot be considered in determining the loss.
 - (2) A worker may enter a treated area under a restricted-entry interval in an agricultural emergency to perform tasks, including hand labor tasks, necessary to mitigate the effects of the agricultural emergency, if the agricultural employer assures that all the following criteria are met:
 - (i) A State, Tribal, or Federal Agency having jurisdiction declares the existence of circumstances that could cause an agricultural emergency on that agricultural establishment.
 - (ii) The agricultural employer determines the agricultural establishment is subject to the circumstances declared under paragraph (d)(2)(i) of this section that result in an agricultural emergency meeting the criteria of paragraph (d)(1) of this section.
 - (iii) The requirements of paragraphs (c)(3) through (9) of this section are met.

(e) *Exception requiring Agency approval.*

The Agency may, in accordance with paragraphs (e) (1) through (3) of this section, grant an exception from the requirements of this section. An exception may be withdrawn in accordance with paragraph (e)(6) of this section.

(1) *Exception Requiring agency approval.*

A request for an exception must be submitted to the Office of Pesticide Programs' Document Processing Desk at the appropriate address as set forth in 40 CFR 150.17(a) or (b) and must be accompanied by two copies of the following information:

- (i) The name, address, and telephone number of the submitter.
- (ii) The time period for which the exception is requested.
- (iii) A description of the crop(s) and specific crop production task(s) for which the exception is requested. Such a description must include an explanation as to the necessity of applying pesticides of a type and at a frequency such that the restricted-entry interval would interfere with necessary and time-sensitive hand labor tasks for the period for which the exception is sought.
- (iv) A description of the geographic area for which the exception is requested. If the exception request is for a limited geographic area, the explanation must include a description as to why the circumstances of exposure or economic impact resulting from the prohibition of routine hand labor tasks during the restricted-entry interval are unique to the geographic area named in the exception.
- (v) An explanation as to why, for each requested crop-task combination, alternative practices would not be technically or financially viable. Such alternative practices might include: rescheduling the pesticide application or hand labor activity; using a non-chemical pest control alternative; using an alternative to the hand labor tasks, such as machine cultivation; or substituting a pesticide with a shorter restricted-entry interval. This information should include estimates or data on per acre revenue and cost of production for the crop and area for which the exception is requested. These estimates or data should include: the situation prior to implementation of this final rule, the situation after implementation of this final rule if the exception is not granted, the situation after implementation of this final rule if the exception is granted, and specific information on individual factors which cause differences in revenues and costs among the three situations.
- (vi) A description or documentation of the safety and feasibility of such an exception, including, but not limited to, the feasibility of performing the necessary hand labor activity while wearing the personal protective equipment required for early entry for the pesticide(s) expected to be applied, the means of mitigating heat-related illness concerns, the period of time required daily per worker to perform the hand labor activity, any suggested methods of reducing the worker's exposure, and any other mitigating factors, such as the availability of running water for routine and emergency decontamination and mechanical devices that would reduce the workers' contact with the treated surfaces. The information should include the costs associated with early-entry, such as decontamination facilities, special information and training for the workers, heat stress avoidance procedures, and provision, inspection, cleaning, and maintenance of personal protective equipment. EPA will not grant exceptions where the costs of early entry equal or exceed the expected loss in value of crop yield or quality.

- (2) *Notice of receipt.*
- (i) When a request for an exception is submitted to the Agency along with all of the information required in paragraph (e)(1) of this section, the Agency shall issue a notice in the Federal Register stating that an exception is being considered, describing the nature of the exception, and allowing at least 30 days for interested parties to comment.
 - (ii) If a request for an exception is submitted to the Agency without all of the information required in paragraph (e)(1) of this section, the Agency shall return the request to the submitter.
- (3) *Exception decision.*
EPA will publish in the Federal Register its decision whether to grant the request for exception. EPA will base its decision on whether the benefits of the exception outweigh the costs, including the value of the health risks attributable to the exception. If the exception is granted, the notice will state the nature of and reasons for the exception.
- (4) *Presumptive denial.*
- (i) Except as provided in paragraph (e)(4)(ii) of this section, persons requesting an exception may assume that the exception has been denied if EPA has not issued its decision whether to grant the exception within 9 months from the comment-closure date specified in the Federal Register notice in which the Agency announced, in accordance with paragraph (e)(2) of this section, that it would consider the exception.
 - (ii) Persons requesting an exception may not assume that the request has been denied as provided by paragraph (e)(4)(i) of this section if the Agency has taken action to extend its review period for a specified time interval due to the complexity of the exception request or to the number of exception requests concurrently under Agency review. EPA shall state the reason(s) for the delay in issuing a decision on the exception request. A notice of such an action may be published in the Federal Register or persons who requested the exception may be directly notified of the action.
- (5) *Agricultural employer duties.* When a worker enters a treated area during a restricted-entry interval under an exception granted under paragraph (e) of this section, the agricultural employer shall assure that the requirements of paragraphs (c)(3) through (9) of this section are met, unless the notice granting the exception specifically indicates otherwise.
- (6) *Withdrawing an exception.* An exception may be withdrawn by the Agency at any time if the Agency receives poisoning information or other data that indicate that the health risks imposed by this early-entry exception are unacceptable or if the Agency receives other information that indicates that the exception is no longer necessary or prudent. If the Agency determines that an exception should be withdrawn, it will publish a notice in the Federal Register, stating the basis for its determination. Affected parties would then have 30 days to request a hearing on the Agency's determination. The exception, however, would be discontinued as of the date specified by EPA in the notice, which may include any of the 30-day period and the time required for any subsequent hearing process. Thereafter the Agency will decide whether to withdraw the exception and will publish a notice in the Federal Register stating its decision.

(7) *List of exceptions granted by EPA.*

The following administrative exceptions from the requirements of this section have been granted by the EPA. Each exception listed in paragraph (e)(7) of this section contains a reference to the Federal Register notice in which EPA has granted the exception and the effective dates of the exception. The terms and conditions of the exception appear in the referenced Federal Register notice.

- (i) Exception to perform irrigation tasks under specified conditions published in the Federal Register of May 3, 1995.
- (ii) Exceptions to perform limited contact tasks under specified conditions published in the Federal Register of May 3, 1995.

[57 FR 38151, Aug. 21, 1992, as amended at 59 FR 30624, June 10, 1994; 60 FR 21954, May 3, 1995; 62 FR 52003, Oct. 3, 1997; 69 FR 53346, Sept. 1, 2004; 71 FR 35546, June 21, 2006; 73 FR 75598, Dec. 12, 2008]

§ 170.120 Notice of applications.

- (a) *Notification to workers of pesticide applications in greenhouses.* The agricultural employer shall notify workers of any pesticide application in the greenhouse in accordance with this paragraph.
 - (1) All pesticide applications shall be posted in accordance with paragraph (c) of this section.
 - (2) If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall also provide oral notification of the application to the worker in accordance with paragraph (d) of this section.
 - (3) Notice need not be given to a worker if the agricultural employer can assure that one of the following is met:
 - (i) From the start of the application until the end of the application and during any restricted-entry interval, the worker will not enter, work in, remain in, or pass through the greenhouse; or
 - (ii) The worker applied (or supervised the application of) the pesticide for which the notice is intended and is aware of all information required by paragraphs (d)(1) through (3) of this section.
- (b) *Notification to workers on farms, in nurseries, or in forests of pesticide applications.* The agricultural employer shall notify workers of any pesticide application on the farm or in the nursery or forest in accordance with this paragraph.
 - (1) If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall post signs in accordance with paragraph (c) of this section and shall provide oral notification of the application to the worker in accordance with paragraph (d) of this section.
 - (2) For any pesticide other than those for which the labeling requires both posting and oral notification of applications, the agricultural employer shall give notice of the application to the worker either by the posting of warning signs in accordance with paragraph (c) of this section or orally in accordance with paragraph (d) of this section, and shall inform the workers as to which method of notification is in effect.
 - (3) Notice need not be given to a worker if the agricultural employer can assure that one of the following is met:
 - (i) From the start of the application until the end of the application and during any restricted-entry interval, the worker will not enter, work in, remain in, or pass through on foot the treated area or any area within 1/4 mile of the treated area; or
 - (ii) The worker applied (or supervised the application of) the pesticide for which the notice is intended and is aware of all information required by (d)(1) through (3) of this section.

(c) *Posted warning signs.*

The agricultural employer shall post warning signs in accordance with the following criteria:

- (1) The warning sign shall have a background color that contrasts with red. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," shall be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" shall be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in a shade that contrasts with red. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information. An example of a warning sign meeting these requirements, other than the size requirements, follows: (Refer to image on page 58)
- (2) The standard sign shall be at least 14 inches by 16 inches with letters at least 1 inch in height. Farms and forests shall use the standard size sign unless a smaller sign is necessary because the treated area is too small to accommodate a sign of this size. In nurseries and greenhouses, the agricultural employer may, at any time, use a sign smaller than the standard size sign. Whenever a small sign is used on any establishment, there are specific posting distances depending on the size of the lettering and symbol on the sign. If a sign is used with DANGER and PELIGRO in letters at least 7/8 inch in height and the remaining letters at least 1/2 inch in height and a red circle at least 3 inches in diameter containing an upraised hand and a stern face, the signs shall be no further than 50 feet apart. If a sign is used with DANGER and PELIGRO in letters at least 7/16 inch in height and the remaining letters at least 1/4 inch in height and a red circle at least 1 1/2 inches in diameter containing an upraised hand and a stern face, the signs shall be no further than 25 feet apart. A sign with DANGER and PELIGRO in letters less than 7/16 inch in height or with any words in letters less than 1/4 inch in height or a red circle smaller than 1 1/2 inches in diameter containing an upraised hand and a stern face will not satisfy the requirements of the rule. All signs must meet the requirements of paragraph (c) (1) of this section.
- (3) The employer may replace the Spanish portion of the warning sign with a non-English language read by the largest group of workers who do not read English. The replacement sign must be in the same format as the original sign and be visible and legible.
- (4) On farms and in forests and nurseries, the signs shall be visible from all usual points of worker entry to the treated area, including at least each access road, each border with any labor camp adjacent to the treated area, and each footpath and other walking route that enters the treated area. When there are no usual points of worker entry, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.
- (5) In greenhouses, the signs shall be posted so they are visible from all usual points of worker entry to the treated area including each aisle or other walking route that enters the treated area. When there are no usual points of worker entry to the treated area, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.
- (6) The signs shall:
 - (i) Be posted no sooner than 24 hours before the scheduled application of the pesticide.
 - (ii) Remain posted throughout the application and any restricted-entry interval.
 - (iii) Be removed within 3 days after the end of the application and any restricted-entry interval and before agricultural-worker entry is permitted, other than entry permitted by §170.112.

- (7) The signs shall remain visible and legible during the time they are posted.
 - (8) When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry, other than entry permitted by § 170.112, is prohibited for the entire area while the signs are posted.
- (d) *Oral warnings.*
The agricultural employer shall provide oral warnings to workers in a manner that the worker can understand. If a worker will be on the premises during the application, the warning shall be given before the application takes place. Otherwise, the warning shall be given at the beginning of the worker's first work period during which the application is taking place or the restricted-entry interval for the pesticide is in effect. The warning shall consist of:
- (1) The location and description of the treated area.
 - (2) The time during which entry is restricted.
 - (3) Instructions not to enter the treated area until the restricted-entry interval has expired.

[57 FR 38151, Aug. 21, 1992, as amended at 61 FR 33207, June 26, 1996]

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

- (a) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in §170.135(e) and (f).
- (b) *Timing.*
 - (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.
 - (2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.
- (c) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier. Required information. The information shall include:
 - (1) The location and description of the treated area.
 - (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
 - (3) The time and date the pesticide is to be applied.
 - (4) The restricted-entry interval for the pesticide.

170.124 Notice of applications to handler employers.

Whenever handlers who are employed by a commercial pesticide handling establishment will be performing pesticide handling tasks on an agricultural establishment, the agricultural employer shall provide to the handler employer, or assure that the handler employer is aware of, the following information concerning any areas on the agricultural establishment that the handler may be in (or may walk within 1/4 mile of) and that may be treated with a pesticide or that may be under a restricted-entry interval while the handler will be on the agricultural establishment:

- (a) Specific location and description of any such areas; and
- (b) Restrictions on entering those areas.

§ 170.130 Pesticide safety training for workers.

(a) General requirement

(1) *Agricultural employer assurance.*

The agricultural employer shall assure that each worker, required by this section to be trained, has been trained according to this section during the last 5 years, counting from the end of the month in which the training was completed.

(2) *Requirement for workers performing early-entry activities.*

Before a worker enters a treated area on the agricultural establishment during a restricted-entry interval to perform early-entry activities permitted by §170.112 and contacts anything that has been treated with the pesticide to which the restricted-entry interval applies, including but not limited to, soil, water, or surfaces of plants, the agricultural employer shall assure that the worker has been trained.

(3) *Requirements for other agricultural workers—*

(i) *Information before entry.* Except as provided in paragraph (a)(2) of this section, before a worker enters any areas on the agricultural establishment where, within the last 30 days a pesticide to which this subpart applies has been applied or the restricted-entry interval for such pesticide has been in effect, the agricultural employer shall assure that the worker has been provided the pesticide safety information specified in paragraph (c), in a manner that agricultural workers can understand, such as by providing written materials or oral communication or by other means. The agricultural employer must be able to verify compliance with this requirement.

(ii) *Training before the 6th day of entry.* Except as provided in paragraph (a)(2) of this section, before the 6th day that a worker enters any areas on the agricultural establishment where, within the last 30 days a pesticide to which this subpart applies has been applied or a restricted-entry interval for such pesticide has been in effect, the agricultural employer shall assure that the worker has been trained.

- (b) *Exceptions.* The following persons need not be trained under this section:
- (1) A worker who is currently certified as an applicator of restricted-use pesticides under part 171 of this chapter.
 - (2) A worker who satisfies the training requirements of part 171 of this chapter.
 - (3) A worker who satisfies the handler training requirements of §170.230(c).
 - (4) A worker who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal lead agency for pesticide enforcement, provided that a requirement for such certification or licensing is pesticide safety training that includes all the information set out in §170.230(c)(4).
- (c) *Pesticide safety information.* The pesticide safety information required by paragraph (a)(3)(i) shall be presented to workers in a manner that the workers can understand. At a minimum, the following information shall be provided:
- (1) Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications.
 - (2) Prevent pesticides from entering your body by:
 - (i) Following directions and/or signs about keeping out of treated or restricted areas.
 - (ii) Washing before eating, drinking, using chewing gum or tobacco, or using the toilet.
 - (iii) Wearing work clothing that protects the body from pesticide residues.
 - (iv) Washing/showering with soap and water, shampoo hair, and put on clean clothes after work.
 - (v) Washing work clothes separately from other clothes before wearing them again.
 - (vi) Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.
 - (3) Further training will be provided within 5 days.
- (d) *Training programs.*
- (1) General pesticide safety information shall be presented to workers either orally from written materials or audiovisually. The information must be presented in a manner that the workers can understand (such as through a translator) using nontechnical terms. The presenter also shall respond to workers' questions.
 - (2) The person who conducts the training shall meet at least one of the following criteria:
 - (i) Be currently certified as an applicator of restricted-use pesticides under part 171 of this chapter; or
 - (ii) Be currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or
 - (iii) Have completed a pesticide safety train-the-trainer program approved by a State, Federal, or Tribal agency having jurisdiction; or
 - (iv) Satisfy the training requirements in part 171 of this chapter or in §170.230(c).
 - (3) Any person who issues an EPA-approved Worker Protection Standard worker training certificate must assure that the worker who receives the training certificate has been trained in accordance with (d)(4) of this section.

- (4) The training materials shall convey, at a minimum, the following information:
- (i) Where and in what form pesticides may be encountered during work activities.
 - (ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.
 - (iii) Routes through which pesticides can enter the body.
 - (iv) Signs and symptoms of common types of pesticide poisoning
 - (v) Emergency first aid for pesticide injuries or poisonings.
 - (vi) How to obtain emergency medical care.
 - (vii) Routine and emergency decontamination procedures, including emergency eyeflushing techniques.
 - (viii) Hazards from chemigation and drift.
 - (ix) Hazards from pesticide residues on clothing.
 - (x) Warnings about taking pesticides or pesticide containers home.
 - (xi) Requirements of this subpart designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.
- (e) *Verification of training.*
- (1) Except as provided in paragraph (e)(2) of this section, if the agricultural employer assures that a worker possesses an EPA-approved Worker Protection Standard worker training certificate, then the requirements of paragraph (a) and (c) of this section will have been met.
 - (2) If the agricultural employer is aware or has reason to know that an EPA-approved Worker Protection Standard worker training certificate has not been issued in accordance with this section, or has not been issued to the worker bearing the certificate, or the training was completed more than 5 years before the beginning of the current month, a worker's possession of that certificate does not meet the requirements of paragraph (a) of this section.

[57 FR 38151, Aug. 21, 1992, as amended at 60 FR 21947, 21952, May 3, 1995; 73 FR 75598, Dec. 12, 2008] §

170.135 Posted pesticide safety information.

(a) *Requirement.*

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, pesticide safety information.

(b) *Pesticide safety poster.*

A safety poster must be displayed that conveys, at a minimum, the pesticide safety concepts listed in paragraphs (b)(1)(i) through (vii) and (b)(2) of this section. Displays conforming to §170.311(a)(3) meet the requirements of this paragraph.

(c) *Emergency medical care information.*

- (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster. Displays conforming to §170.311(a)(3)(ix) meet the requirements of this paragraph.
- (2) The agricultural employer shall inform workers promptly of any change to the information on emergency medical care facilities.

- (d) *Location.*
- (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers.
 - (2) The information shall be displayed in a location in or near the forest in a place where it can be readily seen and read by workers and where workers are likely to congregate or pass by, such as at a decontamination site or an equipment storage site.
- (e) *Accessibility.* Workers shall be informed of the location of the information and shall be allowed access to it.
- (f) *Legibility.* The information shall remain legible during the time it is posted.

[57 FR 38151, Aug. 21, 1992, as amended at 80 FR 67556, Nov. 2, 2015]

§ 170.150 Decontamination.

- (a) (1) *Requirement.* The agricultural employer must provide decontamination supplies for workers in accordance with this section whenever:
- (i) Any worker on the agricultural establishment is performing an activity in the area where a pesticide was applied or a restricted entry interval (REI) was in effect within the last 30 days, and;
 - (ii) The worker contacts anything that has been treated with the pesticide, including, but not limited to soil, water, plants, plant surfaces, and plant parts.
- (2) *Exception.* The 30-day time period established in paragraph (a)(1)(i) of this section shall not apply if the only pesticides used in the treated area are products with an REI of 4 hours or less on the label (but not a product without an REI on the label). When workers are in such treated areas, the agricultural employer shall provide decontamination supplies for not less than 7 days following the expiration of any applicable REI.
- (b) *General conditions.*
- (1) The agricultural employer shall provide workers with enough water for routine washing and emergency eyeflushing. At all times when the water is available to workers, the employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.
 - (2) When water stored in a tank is to be used for mixing pesticides, it shall not be used for decontamination or eyeflushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank.
 - (3) The agricultural employer shall provide soap and single-use towels in quantities sufficient to meet worker's needs.
 - (4) To provide for emergency eyeflushing, the agricultural employer shall assure that at least 1 pint of water is immediately available to each worker who is performing early-entry activities permitted by § 170.112 and for which the pesticide labeling requires protective eyewear. The eye flush water shall be carried by the early-entry worker, or shall be on the vehicle the early-entry worker is using, or shall be otherwise immediately accessible.

(c) *Location.*

- (1) The decontamination supplies shall be located together and be reasonably accessible to and not more than 1/4 mile from where workers are working.
- (2) For worker activities performed more than 1/4 mile from the nearest place of vehicular access:
 - (i) The soap, single-use towels, and water may be at the nearest place of vehicular access.
 - (ii) The agricultural employer may permit workers to use clean water from springs, streams, lakes, or other sources for decontamination at the remote work site, if such water is more accessible than the water located at the nearest place of vehicular access.
- (3) The decontamination supplies shall not be maintained in an area being treated with pesticides.
- (4) The decontamination supplies shall not be maintained in an area that is under a restricted-entry interval, unless the workers for whom the supplies are provided are performing early-entry activities permitted by Sec. 170.112 and involving contact with treated surfaces and the decontamination supplies would otherwise not be reasonably accessible to those workers

(d) *Decontamination after early-entry activities.* At the end of any exposure period for workers engaged in early-entry activities permitted by § 170.112 and involving contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants, the agricultural employer shall provide, at the site where the workers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the workers may wash thoroughly.

[57 FR 38151, Aug. 21, 1992, as amended at 61 FR 33212, June 26, 1996]

§ 170.160 Emergency assistance.

If there is reason to believe that a person who is or has been employed on an agricultural establishment to perform tasks related to the production of agricultural plants has been poisoned or injured by exposure to pesticides used on the agricultural establishment, including, but not limited to, exposures from application, splash, spill, drift, or pesticide residues, the agricultural employer shall:

- (a) Make available to that person prompt transportation from the agricultural establishment, including any labor camp on the agricultural establishment, to an appropriate emergency medical facility.
- (b) Provide to that person or to treating medical personnel, promptly upon request, any obtainable information on:
 - (1) Product name, EPA registration number, and active ingredients of any product to which that person might have been exposed.
 - (2) Antidote, first aid, and other medical information from the product labeling.
 - (3) The circumstances of application or use of the pesticide on the agricultural establishment.
 - (4) The circumstances of exposure of that person to the pesticide.

Subpart C—Standard for Pesticide Handlers

§ 170.202 Applicability of this subpart.

Except as provided by Secs. 170.103 and 170.104, this subpart applies when any pesticide is handled for use on an agricultural establishment.

[60 FR 21952, May 3, 1995]

§ 170.203 Exceptions

Exceptions.

This subpart does not apply when any pesticide is handled for use on an agricultural establishment in the following circumstances:

- (a) For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.
- (b) On livestock or other animals, or in or about animal premises.
- (c) On plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses.
- (d) On plants that are in ornamental gardens, parks, and public or private lawns and grounds and that are intended only for aesthetic purposes or climatic modification.
- (e) In a manner not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, and pasture and rangeland use.
- (f) For control of vertebrate pests.
- (g) As attractants or repellents in traps.
- (h) On the harvested portions of agricultural plants or on harvested timber.
- (i) For research uses of unregistered pesticides.

[57 FR 38151, Aug. 21, 1992. Redesignated at 60 FR 21952, May 3, 1995]

§ 170.204 Exemptions

The handlers listed in this section are exempt from the specified provisions of this subpart.

- (a) *Owners of agricultural establishments.*
 - (1) The owner of an agricultural establishment is not required to provide to himself or members of his immediate family who are performing handling tasks on their own agricultural establishment the protections of:
 - (i) Section 170.210(b) and (c).
 - (ii) Section 170.222.
 - (iii) Section 170.230.
 - (iv) Section 170.232.
 - (v) Section 170.234.
 - (vi) Section 170.235.
 - (vii) Section 170.240(e) through (g).
 - (viii) Section 170.250.
 - (ix) Section 170.260.
 - (2) The owner of the agricultural establishment must provide the protections listed in paragraphs (a)(1)(i) through (ix) of this section to other handlers and other persons who are not members of his immediate family.
- (b) *Crop advisors.*
 - (1) Provided that the conditions of paragraph (b)(2) of this section are met, a person who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal lead agency for pesticide enforcement, and persons performing crop advising tasks under such qualified crop advisor's direct supervision, are exempt from the provisions of:

- (i) Section 170.232.
- (ii) Section 170.240.
- (iii) Section 170.250.
- (iv) Section 170.260.

A person is under the direct supervision of a crop advisor when the crop advisor exerts the supervisory controls set out in paragraphs (b)(2)(iv) and (v) of this section. Direct supervision does not require that the crop advisor be physically present at all times, but the crop advisor must be readily accessible to the employees at all times.

(2) Conditions of exemption.

- (i) The certification or licensing program requires pesticide safety training that includes, at least, all the information in §170.230(c)(4).
- (ii) No entry into the treated area occurs until after application ends.
- (iii) Applies only when performing crop advising tasks in the treated area.
- (iv) The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his direct supervision in a language that the person understands.
- (v) Before entering a treated area, the certified or licensed crop advisor must inform, through an established practice of communication, each person under his direct supervision of the pesticide products and active ingredient(s) applied, method of application, time of application, the restricted entry interval, which tasks to undertake, and how to contact the crop advisor.

[60 FR 21953, May 3, 1995, as amended at 73 FR 75599, Dec. 12, 2008]

§ 170.210 Restrictions during applications.

- (a) *Contact with workers and other persons.*
The handler employer and the handler shall assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler.
- (b) *Handlers handling highly toxic pesticides.*
The handler employer shall assure that any handler who is performing any handling activity with a product that has the skull and crossbones symbol on the front panel of the label is monitored visually or by voice communication at least every 2 hours.
- (c) *Fumigant applications in greenhouses.* The handler employer shall assure:
 - (1) That any handler who handles a fumigant in a greenhouse, including a handler who enters the greenhouse before the acceptable inhalation exposure level or ventilation criteria have been met to monitor air levels or to initiate ventilation, maintains continuous visual or voice contact with another handler.
 - (2) That the other handler has immediate access to the personal protective equipment required by the fumigant labeling for handlers in the event entry into the fumigated greenhouse becomes necessary for rescue.

170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

- (a) *Location, accessibility, and legibility.* The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.
- (b) *Timing.*
 - (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.
 - (2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.
 - (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.
- (c) *Required information.* The information shall include:
 - (1) The location and description of the treated area.
 - (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
 - (3) The time and date the pesticide is to be applied.
 - (4) The restricted-entry interval for the pesticide.

170.224 Notice of applications to agricultural employers.

Before the application of any pesticide on or in an agricultural establishment, the handler employer shall provide the following information to any agricultural employer for the establishment or shall assure that any agricultural employer is aware of:

- (a) Specific location and description of the treated area.
- (b) Time and date of application.
- (c) Product name, EPA registration number, and active ingredient(s).
- (d) Restricted-entry interval.
- (e) Whether posting and oral notification are required.
- (f) Any other product-specific requirements on the product labeling concerning protection of workers or other persons during or after application.

§ 170.230 Pesticide safety training for handlers.

- (a) *Requirement.* Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.
- (b) *Exceptions.* The following persons need not be trained under this section:
- (1) A handler who is currently certified as an applicator of restricted-use pesticides under part 171 of this chapter.
 - (2) A handler who satisfies the training requirements of part 171 of this chapter.
 - (3) A handler who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal lead agency for pesticide enforcement, provided that a requirement for such certification or licensing is pesticide safety training that includes all the information set out in Sec. 170.230(c)(4).
- (c) *Training programs.*
- (1) General pesticide safety information shall be presented to handlers either orally from written materials or audiovisually. The information must be presented in a manner that the handlers can understand (such as through a translator). The presenter also shall respond to handlers' questions.
 - (2) The person who conducts the training shall meet at least one of the following criteria:
 - (i) Be currently certified as an applicator of restricted-use pesticides under part 171 of this chapter; or
 - (ii) Be currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or
 - (iii) Have completed a pesticide safety train-the-trainer program approved by a State, Federal, or Tribal agency having jurisdiction.
 - (3) Any person who issues an EPA-approved Worker Protection Standard handler training certificate must assure that the handler who receives the training certificate has been trained in accordance with paragraph (c)(4) of this section.
 - (4) The pesticide safety training materials must convey, at a minimum, the following information:
 - (i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.
 - (ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.
 - (iii) Routes by which pesticides can enter the body.
 - (iv) Signs and symptoms of common types of pesticide poisoning.
 - (v) Emergency first aid for pesticide injuries or poisonings.

- (vi) How to obtain emergency medical care.
- (vii) Routine and emergency decontamination procedures.
- (viii) Need for and appropriate use of personal protective equipment.
- (ix) Prevention, recognition, and first aid treatment of heat-related illness.
- (x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
- (xi) Environmental concerns such as drift, runoff, and wildlife hazards.
- (xii) Warnings about taking pesticides or pesticide containers home.
- (xiii) Requirements of this subpart that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(d) *Verification of training.*

- (1) Except as provided in paragraph (d)(2) of this section, if the handler employer assures that a handler possesses an EPA-approved Worker Protection Standard handler training certificate, then the requirements of paragraph (a) of this section will have been met.
- (2) If the handler employer is aware or has reason to know that an EPA-approved Worker Protection Standard handler training certificate has not been issued in accordance with this section, or has not been issued to the handler bearing the certificate, or the handler training was completed more than 5 years before the beginning of the current month, a handler's possession of that certificate does not meet the requirements of paragraph (a) of this section.

[57 FR 38151, Aug. 21, 1992, as amended at 60 FR 21953, May 3, 1995]

§ 170.232 Knowledge of labeling and site-specific information.

(a) *Knowledge of labeling information.*

- (1) The handler employer shall assure that before the handler performs any handling activity, the handler either has read the product labeling or has been informed in a manner the handler can understand of all labeling requirements related to safe use of the pesticide, such as signal words, human hazard precautions, personal protective equipment requirements, first aid instructions, environmental precautions, and any additional precautions pertaining to the handling activity to be performed.
- (2) The handler employer shall assure that the handler has access to the product labeling information during handling activities.

(b) *Knowledge of site-specific information.* Whenever a handler who is employed by a commercial pesticide handling establishment will be performing pesticide handling tasks on an agricultural establishment, the handler employer shall assure that the handler is aware of the following information concerning any areas on the agricultural establishment that the handler may be in (or may walk within 1/4 mile of) and that may be treated with a pesticide or that may be under a restricted-entry interval while the handler will be on the agricultural establishment:

- (1) Specific location and description of any such areas; and
- (2) Restrictions on entering those areas.

§ 170.234 Safe operation of equipment.

- (a) The handler employer shall assure that before the handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment, including, when relevant, chemigation safety requirements and drift avoidance.
- (b) The handler employer shall assure that, before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or is replaced.
- (c) Before allowing any person to repair, clean, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the handler employer shall assure that pesticide residues have been removed from the equipment, unless the person doing the cleaning, repairing, or adjusting is a handler employed by the agricultural or commercial pesticide handling establishment. If pesticide residue removal is not feasible, the handler employer shall assure that the person who repairs, cleans, or adjusts such equipment is informed:
 - (1) That such equipment may be contaminated with pesticides.
 - (2) Of the potentially harmful effects of exposure to pesticides.
 - (3) Of the correct way to handle such equipment.

§170.235 Posted pesticide safety information.

- (a) *Requirement.* When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, pesticide safety information.
- (b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the pesticide safety concepts listed in paragraphs (b)(1)(i) through (vii) and (b)(2) of this section. Displays conforming to 170.311(a)(3) meet the requirements of this paragraph.
- (c) *Emergency medical care information.*
 - (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster. Displays conforming to §170.311(a)(3)(ix) meet the requirements of this paragraph.
 - (2) The handler employer shall inform handlers promptly of any change to the information on emergency medical care facilities.
- (d) *Location.*
 - (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by handlers.
 - (2) The information shall be displayed in a location in or near the forest in a place where it can be readily seen and read by handlers and where handlers are likely to congregate or pass by, such as at a decontamination site or an equipment storage site.
- (e) *Accessibility.* Handlers shall be informed of the location of the information and shall be allowed access to it.
- (f) *Legibility.* The information shall remain legible during the time it is posted.

[57 FR 38151, Aug. 21, 1992, as amended at 80 FR 67556, Nov. 2, 2015]

§ 170.240 Personal protective equipment.

- (a) *Requirement.* Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(b) *Definition.*

- (1) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.
- (2) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(c) *Provision.* When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

- (1) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.
 - (2) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.
 - (3) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.
 - (4) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one- or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over another layer of clothing.
 - (5) (i) Gloves shall be of the type specified by the product labeling. Gloves made of leather, cotton, or other absorbent material may not be worn while mixing, loading, applying, or otherwise handling pesticides, unless gloves made of these materials are listed as acceptable for such use on the product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.
- (6) When "chemical-resistant footwear" is specified by the product labeling, one of the following types of footwear must be worn:
 - (i) Chemical-resistant shoes.
 - (ii) Chemical-resistant boots.
 - (iii) Chemical-resistant shoe coverings worn over shoes or boots.

- (7) When "protective eyewear" is specified by the product labeling, one of the following types of eyewear must be worn:
 - (i) Goggles.
 - (ii) Face shield.
 - (iii) Safety glasses with front, brow, and temple protection.
 - (iv) Full-face respirator.
 - (8) When a "chemical-resistant apron" is specified by the product labeling, an apron that covers the front of the body from mid-chest to the knees shall be worn.
 - (9) When a respirator is specified by the product labeling, it shall be appropriate for the pesticide product used and for the activity to be performed. The handler employer shall assure that the respirator fits correctly.
 - (10) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical resistant hood or a chemical-resistant hat with a wide brim.
- (d) *Exceptions to personal protective equipment specified on product labeling—*
- (1) *Body protection.*
 - (i) A chemical-resistant suit may be substituted for "coveralls," and any requirement for an additional layer of clothing beneath is waived.
 - (ii) A chemical-resistant suit may be substituted for "coveralls" and a chemical-resistant apron.
 - (2) *Boots.* If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.
 - (3) *Gloves.* If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during handling activities with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.
 - (4) *Closed systems.*
 If handling tasks are performed using properly functioning systems that enclose the pesticide to prevent it from contacting handlers or other persons, and if such systems are used and are maintained in accordance with that manufacturer's written operating instructions, exceptions to labeling-specified personal protective equipment for the handling activity are permitted as provided in paragraphs (d)(4)(i) and (ii) of this section.
 - (i) Persons using a closed system to mix or load pesticides with a signal word of DANGER or WARNING may substitute a long-sleeved shirt, long pants, shoes, socks, chemical-resistant apron, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.
 - (ii) Persons using a closed system to mix or load pesticides other than those in paragraph (d)(4)(i) of this section or to perform other handling tasks may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment.
 - (iii) Persons using a closed system that operates under pressure shall wear protective eye wear.
 - (iv) Persons using a closed system shall have all labeling-specified personal protective equipment immediately available for use in an emergency.
 - (5) *Enclosed cabs.*
 If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in paragraphs (d) (5)(i) through (iv) of this section.
 - (i) Persons occupying an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

- (ii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer or by a governmental agency to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a dust/mist-filtering respirator is specified on the pesticide product labeling, it must be worn.
 - (iii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer or by a governmental agency to provide respiratory protection equivalent to or greater than the vapor- or gas-removing respirator specified on pesticide product labeling may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If an air-supplying respirator or a self-contained breathing apparatus (SCBA) is specified on the pesticide product labeling, it must be worn.
 - (iv) Persons occupying an enclosed cab shall have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They shall wear such personal protective equipment if it is necessary to exit the cab and contact pesticide-treated surfaces in the treated area. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab.
- (6) *Aerial applications*
- (i) *Use of gloves.* The wearing of chemical-resistant gloves when entering or leaving an aircraft contaminated used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.
 - (ii) *Open cockpit.* Persons occupying an open cockpit shall use the personal protective equipment specified in the product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A visor may be substituted for protective eyewear.
 - (iii) *Enclosed cockpit.* Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.
- (7) *Crop advisors.* Crop advisors entering treated areas while a restricted-entry interval is in effect may wear the personal protective equipment specified on the pesticide labeling for early-entry activities instead of the personal protective equipment specified on the pesticide labeling for handling activities, provided:
- (i) Application has been completed for at least 4 hours.
 - (ii) Any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by §170.110(c)(3) or in the labeling have been met.
- (e) *Use of personal protective equipment.*
- (1) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.
 - (2) The handler employer shall assure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(f) *Cleaning and maintenance.*

- (1) The handler employer shall assure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.
- (2) If any personal protective equipment cannot be cleaned properly, the handler employer shall dispose of the personal protective equipment in accordance with any applicable Federal, State, and local regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with an undiluted pesticide that has the signal word DANGER or WARNING on the label shall not be reused.
- (3) The handler employer shall assure that contaminated personal protective equipment is kept separately and washed separately from any other clothing or laundry.
- (4) The handler employer shall assure that all clean personal protective equipment shall be either dried thoroughly before being stored or shall be put in a well ventilated place to dry.
- (5) The handler employer shall assure that all personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.
- (6) The handler employer shall assure that when dust/mist filtering respirators are used, the filters shall be replaced:
 - (i) When breathing resistance becomes excessive.
 - (ii) When the filter element has physical damage or tears.
 - (iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.
 - (iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.
- (7) The handler employer shall assure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges shall be replaced:
 - (i) At the first indication of odor, taste, or irritation.
 - (ii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.
 - (iii) In the absence of any other instructions or indications of service life, at the end of each day's work period.
- (8) The handler employer shall inform any person who cleans or launders personal protective equipment:
 - (i) That such equipment may be contaminated with pesticides.
 - (ii) Of the potentially harmful effects of exposure to pesticides.
 - (iii) Of the correct way(s) to clean personal protective equipment and to protect themselves when handling such equipment.
- (9) The handler employer shall assure that handlers have a clean place(s) away from pesticide storage and pesticide use areas where they may:
 - (i) Store personal clothing not in use.
 - (ii) Put on personal protective equipment at the start of any exposure period.
 - (iii) Remove personal protective equipment at the end of any exposure period.
- (10) The handler employer shall not allow or direct any handler to wear home or to take home personal protective equipment contaminated with pesticides.

- (g) Heat-related illness. When the use of personal protective equipment is specified by the labeling of any pesticide for the handling activity, the handler employer shall assure that no handler is allowed or directed to perform the handling activity unless appropriate measures are taken, if necessary, to prevent heat-related illness.

[57 FR 38151, Aug. 21, 1992, as amended at 69 FR 53346, Sept. 1, 2004]

§ 170.250 Decontamination.

- (a) *Requirement.* During any handling activity, the handler employer shall provide for handlers, in accordance with this section, decontamination supplies for washing off pesticides and pesticide residues.
- (b) *General conditions.*
- (1) The handler employer shall provide handlers with enough water for routine washing, for emergency eyeflushing, and for washing the entire body in case of an emergency. At all times when the water is available to handlers, the handler employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.
 - (2) When water stored in a tank is to be used for mixing pesticides, it shall not be used for decontamination or eye flushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank.
 - (3) The handler employer shall provide soap and single-use towels in quantities sufficient to meet handlers' needs.
 - (4) The handler employer shall provide one clean change of clothing, such as coveralls, for use in an emergency.
- (c) *Location.* The decontamination supplies shall be located together and be reasonably accessible to and not more than 1/4 mile from each handler during the handling activity.
- (1) Exception for mixing sites. For mixing activities, decontamination supplies shall be at the mixing site.
 - (2) Exception for pilots. Decontamination supplies for a pilot who is applying pesticides aerially shall be in the airplane or at the aircraft loading site.
 - (3) Exception for handling pesticides in remote areas. When handling activities are performed more than 1/4 mile from the nearest place of vehicular access:
 - (i) The soap, single-use towels, clean change of clothing, and water may be at the nearest place of vehicular access.
 - (ii) The handler employer may permit handlers to use clean water from springs, streams, lakes, or other sources for decontamination at the remote work site, if such water is more accessible than the water located at the nearest place of vehicular access.
 - (4) Decontamination supplies in treated areas. The decontamination supplies shall not be in an area being treated with pesticides or in an area under a restricted-entry interval, unless:
 - (i) The decontamination supplies are in the area where the handler is performing handling activities;
 - (ii) The soap, single-use towels, and clean change of clothing are in enclosed containers; and
 - (iii) The water is running tap water or is enclosed in a container.

- (d) Emergency eyeflushing. To provide for emergency eyeflushing, the handler employer shall assure that at least 1 pint of water is immediately available to each handler who is performing tasks for which the pesticide labeling requires protective eyewear. The eyeflush water shall be carried by the handler, or shall be on the vehicle or aircraft the handler is using, or shall be otherwise immediately accessible.
- (e) Decontamination after handling activities. At the end of any exposure period, the handler employer shall provide at the site where handlers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the handlers may wash thoroughly.

[57 FR 38151, Aug. 21, 1992, as amended at 61 FR 33213, June 26, 1996]

§ 170.260 Emergency assistance.

If there is reason to believe that a person who is or has been employed by an agricultural establishment or commercial pesticide handling establishment to perform pesticide handling tasks has been poisoned or injured by exposure to pesticides as a result of that employment, including, but not limited to, exposures from handling tasks or from application, splash, spill, drift, or pesticide residues, the handler employer shall:

- (a) Make available to that person prompt transportation from the place of employment or the handling site to an appropriate emergency medical facility.
- (b) Provide to that person or to treating medical personnel, promptly upon request, any obtainable information on:
 - (1) Product name, EPA registration number, and active ingredients of any product to which that person might have been exposed.
 - (2) Antidote, first aid, and other medical information from the product labeling.
 - (3) The circumstances of handling of the pesticide.
 - (4) The circumstances of exposure of that person to the pesticide.

