

# TEXAS DEPARTMENT OF AGRICULTURE PESTICIDE LAWS AND REGULATIONS



Effective September, 2009

Published by the  
Texas Department of Agriculture  
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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.

## **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.

of this title (relating to Supervision) before the noncertified person may handle M-44 sodium cyanide. Licensed commercial M-44 sodium cyanide applicators must be physically present to supervise the use of M-44 sodium cyanide by noncertified applicators. Certified private applicators authorized to apply M-44 sodium cyanide 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 label including the use restriction bulletin on M-44 sodium cyanide issued by the department (EPA Registration Number 33858-2) when using M-44 sodium cyanide. Copies of the use restrictions 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

## **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 title (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 turf and weed control and a nurseryman licensed by the department in turf weed control for structural pest control applications 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.

**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 Subchapter G of the Code, 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.

## **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 title (relating to County Special Provisions) Aransas, Austin, Bailey, Baylor, Brazoria, Brazos, Briscoe, Burleson, Calhoun, Cochran, Collin, Collingsworth, Culberson, Dallas, Dawson, Deaf Smith, Delta, Dickens, Donley, El Paso, Falls, Foard, Fort Bend, Gaines, Galveston, Hall, Harris, Haskell, Hidalgo, 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

## **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.

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) **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.

(v) **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.



(w) **Hidalgo.** The regulated portion of Hidalgo County is as follows:

- (1) beginning at north county line and U.S. 281; thence south to FM 495; thence west to State Highway 107 (Conway Drive); thence south to U.S. 83 Expressway; thence west along U.S. 83 to west county line;
- (2) all other lands in Hidalgo County are exempt from the Act, Subchapter G and regulations adopted thereunder.

(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.