

Texas Administrative Code

TITLE 4 **AGRICULTURE**
PART 1 **TEXAS DEPARTMENT OF AGRICULTURE**
CHAPTER 7 **PESTICIDES**

Subchapters

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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, entitled Texas Pesticide and Herbicide Regulation.
- (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 Agricultural Extension Service.
- (11) FAA--Federal Aviation Administration.

(12) 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.

(13) Farm operator--The person responsible for the overall control and management of the crop.

(14) Formulation--A mixture of active and inert ingredients prepared for use as a pesticide for practical use.

(15) Nurseryman--A person who possesses a current Class 1, 2, 3, or 4 nursery and floral certificate issued by the department.

(16) 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.

(17) Purchase--For purposes of this chapter, the term purchase does not prohibit a transaction in which the unlicensed person merely provides payment for the pesticide, but actual delivery or physical possession of the pesticide is made to and remains with a properly licensed person or a person under the direct supervision of a properly licensed person.

(18) 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).

(19) 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).

(20) Trained trainer--Anyone who has completed an EPA-approved WPS train-the-trainer program or a WPS-trained handler who may train workers only.

(21) 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.

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

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 of a pesticide 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 \$420 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 pesticide products registered by a registrant must be renewed by the scheduled renewal date included in the registration package as provided by the department. Any new product registered by a registrant 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, registrants 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 in addition to any applicable 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

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: "one pound, 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, and §7.20 of this title (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.

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 submitting 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 registration number of the product;
 - (5) an ingredient statement;
 - (6) the use or uses 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 experimental use permit application site(s); and
 - (9) the proposed method of storage and disposition of any unused experimental use pesticide and its container.
- (c) Pesticide registration fees, as established by §7.10 of this title (relating to Registration of Pesticides), are prorated by quarter from the effective date of the EUP and shall accompany each EUP application if the pesticide is not currently registered for other uses in the state by that registrant.
- (d) 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.
- (e) 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.

SUBCHAPTER C LICENSING

RULE §7.20

Application

- (a) An application for a commercial, or 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 licenses 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 fee for a new dealer license will be prorated as outlined on the License Application form to coincide with the December 31st expiration 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 and renewal fees are:

- (1) Dealers: \$240 for two years;
- (2) Applicators:
 - (A) Commercial: \$180 for one year;
 - (B) Noncommercial: \$120 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: \$12 for one year;
 - (D) Private: \$60 for five years;
 - (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) Fees for a new commercial or noncommercial applicator license application submitted after September 1 of each year will be prorated to include the remaining months of the current licensing year and the following licensing year.
- (f) 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.
- (g) 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.
- (h) 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

RULE §7.21 Applicator Certification

- (a) The department may certify applicators in the following license use categories and subcategories:
 - (1) agricultural pest control:
 - (A) field crop pest control;
 - (B) fruit, nut and vegetable pest control;
 - (C) weed and brush control in pasture and rangeland;
 - (D) predatory animal control;
 - (E) farm storage pest control and fumigation;
 - (F) animal pest control;
 - (G) citrus pest control;
 - (H) livestock protection collar application; and
 - (I) M-44 (Sodium Cyanide application in accordance with §7.40 of this title (relating to M-44 Sodium Cyanide - State-Limited-Use Requirements)).
 - (2) forest pest control;
 - (3) ornamental plant and turf pest control (except as provided in subsection (c)(2) of this section);
 - (A) plant pest and weed control; and

- (B) greenhouse pest control;
- (4) seed treatments;
- (5) right-of-way pest control;
- (6) aquatic pest control:
 - (A) aquatic plant and animal pest control; and
 - (B) anti-fouling paint;
- (7) demonstration and research;
- (8) regulatory pest control;
- (9) aerial application;
- (10) chemigation; and
- (11) chlorine gas.

(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), (6)(A), and (10) 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 not be charged a test fee.

(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 is approved prior to training.

(3) An approved training program may include lectures, panel discussions, organized video or film with live instruction or other activities 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 programs or sponsors if the sponsor fails to provide to the department, upon request, records of training; fails to provide the quality of training 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.

(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 activity may claim to be approved or accepted by the department or use any other such term that would lead a person to believe that it has been approved by the department unless it is so approved.

(8) Each training program shall be approved for one calendar year only.

(9) Department personnel may monitor all approved private applicator training programs, and all fees charged by the sponsor shall be waived for department personnel who monitor the training program.

(10) Upon completion of private applicator training, the sponsor shall direct trainee(s) to the department for testing.

(11) In order for a private applicator training course to be approved by the department, the sponsor must:

(A) submit a completed department-prepared application form;

(B) provide any additional material relevant to the activity which is requested by the department; and

(C) 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.

(12) Sponsors who wish to continue course approval must file for renewal annually on a form prepared by the department.

(c) Commercial and Noncommercial Applicators.

(1) Commercial and noncommercial applicators certified in category (a)(7)-(10) of this section must also be certified in one or more categories from category (a)(1)-(6) of this section prior to performing regulatory pest control or research and demonstration pest control.

(2) A person exempted from licensing requirements pursuant to the Structural Pest Control Act (Vernon's Texas Civil Statutes, Article 135b-6), §11(2) and (6) must be licensed with the department regardless of the use classification of the pesticide.

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

RULE §7.22

Licensing of Applicators

(a) All testing conducted 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 pesticide applicator examination, the laws and regulations examination, and on one or more category tests 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. Applicators may certify in the subcategory listed in §7.21(a)(6)(B) of this title (relating to Applicator Certification) by passing a test pertaining to that subcategory and related laws and regulations and fulfilling other licensing requirements; however, applicators who license in this manner may not add other categories without successfully completing the general pesticide applicator examination and the laws and regulations examination.

(2) A fee of \$24 shall be required for testing each applicant in each license use category and subcategory, and must be paid at the time the test or tests are given. Employees of political subdivisions of the State of Texas or of a federal agency operating in Texas who utilize the license solely in the course of their employment are exempt from examination fees.

(3) Individual test 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 five years 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.

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

RULE §7.23 Applicator Business Proof of Financial Responsibility

Each applicator business, as defined in the Act, §76.111, shall file with the department proof of financial responsibility 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 or renewal of 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.

(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 or renewal of 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.

Source Note: The provisions of this §7.23 adopted to be effective December 4, 1997, 22 TexReg 11652.

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 no more than one continuing education unit (CEU) for each hour of net actual instruction time presented at an approved activity.

(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 §7.24 (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 that attend the activity which contains, at a minimum, the date, course number, the pesticide applicator's name and current license or certificate number 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) send the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or approved formats; and

(4) ensure that CEUs awarded correspond proportionately to the net instruction time.

(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, the pesticide applicator's name and current license or certificate number 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) send 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; and

(5) ensure the establishment of procedures to prohibit an individual from repeating the sponsor's course in two consecutive recertification periods.

- (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) Applicants will recertify through a self-certification program. Each applicant 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 applicant for a period of 12 months after the most recent renewal of their license or certificate. Credits obtained at a single course cannot be split or divided between licensing periods. Applicants who have met their CEU requirements prior to December 31 may apply CEUs obtained the following January and/or February of their recertification year to the next recertification cycle.
- (t) Each commercial or noncommercial applicant must obtain at least five CEUs during the 12 months preceding December 31 in order to recertify and renew a license for the following year. A commercial or noncommercial applicant whose initial license is issued on or after September 1 must obtain the required CEUs anytime during the effective license period. A minimum of one hour each must be obtained from two of the following categories: integrated pest management, laws and regulations or drift minimization. A commercial or noncommercial applicant may not recertify their license using department-approved correspondence activities for two consecutive years.
- (u) An applicant 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, applicants are prohibited from retesting under §7.22 of the title (relating to Licensing of Applicants).
- (v) Private applicants must recertify as follows:
- (1) Each licensed private applicant must obtain 15 CEUs within a five-year period including at least two credits in laws and regulations and two credits in integrated pest management.
 - (2) Each licensed private applicant must obtain 15 CEUs prior to their license expiration date.
 - (3) Private applicants issued a certificate prior to January 10, 1989, may fulfill their recertification requirement on a one-time only basis by completing the Extension private applicant training program, attaining a passing score on the private applicant test, and obtaining a private applicant license. Certified private applicants 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 applicants in this subsection.
 - (4) Private applicants 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 applicant.

(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 \$50 for each 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 applicators from retesting for a new license in lieu of meeting recertification requirements until one year after the expiration of their 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 and 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 assign the 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 sponsor, instructor's name and address, proof of attendance, 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, 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

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.

Source Note: The provisions of this §7.25 adopted to be effective December 4, 1997, 22 TexReg 11652.

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 Environmental Protection Agency pursuant to the requirements of 7 United States Code, §136(b)(2). 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.

SUBCHAPTER D USE AND APPLICATION

RULE §7.30 Classification of Pesticides

(a) Because of their potential to cause adverse effects to nontargeted vegetation, all pesticide products containing the active ingredients as specified in this subsection, alone or in mixtures, shall be classified as stated in paragraphs (1) and (2) of this subsection when distributed in containers of a capacity larger than one quart for liquid material or two pounds for dry or solid material. If the products are marketed using metric measures, the classification applies to containers larger than one liter or one kilogram, respectively:

(1) State-Limited-Use.

(A) 2,4-Dichlorophenoxyacetic acid (2,4-D); 2,4-Dichlorophenoxy butyric acid (2,4-DB); 2,4-Dichlorophenoxy propionic acid (2,4-DP); 2-Methyl-4-Chlorophenoxyacetic acid (MCPA); 3,6-Dichloro-o-anisic acid (dicamba); 3,4-Dichloropropionanilide (propanil); 5-bromo-3-sec-butyl-6-methyluracil (bromacil); 2,4-bis(isopropylamino)-6-methoxy-s-triazine (prometon); and, 3,7-dichloro-8-quinolinecarboxylic acid (quinclorac); and

(B) any and all pesticides and devices using the active ingredients sodium fluoroacetate (Compound 1080) and sodium cyanide, in any quantity, for livestock predation control are classified as state-limited-use pesticides. Additional requirements for the handling and use of Compound 1080 and sodium cyanide are provided at §7.39 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar--State-Limited-Use Requirements) and §7.40 of this title (relating to M-44 Sodium Cyanide--State-Limited-Use Requirements).

(2) Regulated Herbicides.

(A) 2,4-dichlorophenoxyacetic acid (2,4-D);

(B) 2-methyl-4-chlorophenoxyacetic acid (MCPA);

(C) 3,6-dichloro-o-anisic acid (dicamba); and

(D) 3,7-dichloro-8-quinolinecarboxylic acid (quinclorac).

(b) Formulations containing the active ingredients previously listed in this section are exempt from being classified as state-limited use pesticides or regulated herbicides if they meet one of the criteria listed in paragraphs (1) or (2) of this subsection.

(1) specialty fertilizer mixtures that are labeled for ornamental use and registered as required in the Code, Chapter 63, concerning commercial fertilizer; or

(2) products that are ready for use and require no further mixing or dilution before use and are packaged in containers with a capacity of one gallon or less for liquid formulations and four pounds or less for dry or solid materials.

(c) The following shall apply to the use or possession of chlordane or products containing chlordane.

(1) No person shall use any pesticide containing chlordane nor shall there be any permitted use of such pesticide(s) on or after the effective date of this subsection.

(2) Persons in possession of chlordane or compounds containing chlordane shall store the pesticide in a manner as to prevent the release of such pesticide(s) into the environment until such time as the pesticide container or compound can be disposed of in

accordance with the provisions of the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361.

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

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 Texas pesticide law and the Texas pesticide 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 their 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 title (relating to Applicator Recertification); or

(B) the nonlicensed employee is trained 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 Code, §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

RULE §7.32

Records of Distribution

(a) A person required to be licensed as a pesticide dealer by the Act, §76.071 shall maintain for a period of two years a record of each distribution of a restricted-use pesticide, state-limited-use pesticide, or regulated herbicide.

(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) if the pesticide is made available to a nonlicensed person acting under the authorization of the licensed or certified applicator or licensed dealer to whom the pesticide is distributed, the name and address of the nonlicensed person; and
 - (6) if a pesticide that has been classified as a state-limited-use pesticide or a regulated herbicide, and is not a restricted-use pesticide under FIFRA, is made available to a nonlicensed 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, not later than the tenth day of each month, a record of all restricted-use or state-limited-use pesticides or regulated herbicides distributed into the state during the prior month. If no such distributions were made for the prior month, the dealer shall submit a letter 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

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;
 - (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 and air temperature;
 - (9) the FAA "N" number for aerial application equipment or identification number or decal number for other types of application equipment;
 - (10) the name and department license number of the applicator responsible for the application and, if different, the name of the person actually making the application; and
 - (11) the spray permit number for regulated herbicides applied in a regulated county.
- (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.

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

- (a) Application equipment used to apply a restricted-use or state-limited-use pesticide or regulated herbicide to the land of another for compensation must be identified by a license decal. The department shall issue a license decal to be attached to each such piece of equipment in a conspicuous place. The license decal will contain the following information:
 - (1) an identification number; and
 - (2) the name of the issuing agency.
- (b) Notification shall be given to the department of any equipment ownership changes and the license decal must be removed before giving up possession of the equipment.
- (c) 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.

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 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, with the verification card number issued to the trainee, and the city or county and state where the training occurred;
 - (2) issue EPA 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;
 - (3) record trainee information on the verification cards, in ink or other indelible form;
 - (4) issue EPA training verification cards 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 verification cards.
- (c) The EPA WPS warning flag/sign referred to in WPS and §7.37 of this title (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.

Source Note: The provisions of this §7.36 adopted to be effective December 4, 1997, 22 TexReg 11652

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 posted warning flag/sign 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 pesticides 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 to such facilities 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 notification from operators to the department. 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 on the day 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 (in person, in writing, or by telephone) to the requesting person or at the time of delivery 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 at the time of delivery of notification in person, by telephone, or by posting the required notice:

(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) Advance notice need not be given on the day before when an immediate application is required and time does not reasonably allow the giving of notice on the day before a pesticide application. 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.

(n) The Texas Boll Weevil Eradication 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 all of 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 all of 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 forwarding the written request to the foundation or other entity in the U.S. mail at a mailing 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 at 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, the foundation or other entity 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-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 the day prior to a scheduled pesticide application.

(8) Advance notice need not be given on the day before an application when an immediate application is required and time does not reasonably allow the giving of notice on the day before the pesticide application. Notice of an 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 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.

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 title (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, 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 title (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(d) and §7.23 of this title (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 title (relating to Application).

(2) A person seeking certification as a licensed noncommercial LPC applicator shall comply with the licensing requirements of §7.22 (d) of this title (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 title (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(f) of this title (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 title (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 (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 nontarget wild animals to the department immediately (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 title (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

RULE §7.40 Requirements

M-44 Sodium Cyanide--State-Limited-Use

(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 title (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 to handle M-44 sodium cyanide from the department, 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, §§76.071-76.077, the requirements of §7.20 of this title (relating to Application), and any additional federal requirements of the use restriction bulletin (label) for M-44 sodium cyanide under 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 for a period of two years complete records of all transactions involving M-44 sodium cyanide, including:

(A) the amount of materials purchased by the authorized dealer and the date of purchase;

(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 recordkeeping forms prescribed by the department. Authorized dealers may distribute sodium cyanide capsules only in boxes of ten each, in boxes of 25 each, or in boxes of 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 section (relating to Licensing of Applicators and Applicator Business Proof of Financial Responsibility), complete M-44 sodium cyanide training and pass a test prescribed by the department and pay the license fee prescribed by §7.20 of this section (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 title (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 title (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 title (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 title (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 (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 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, Bexar, 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, 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

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-D0; 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; thence in an easterly direction along Koppe Bridge Road to its intersection with FM 2154 (Wellborn Road); thence southeasterly along FM 2154 to its intersection with State Highway 6; thence southeast along State Highway 6 to its intersection with the Navasota River, which is the southern boundary of Brazos County.

(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 prohibited. In no case shall regulated herbicides be used to treat any area that is nearer than two miles to any susceptible crops.

(2) Between April 1 and September 15 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) Calhoun.

(1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.

(2) No permit is required for spraying regulated herbicides during the months of January and February of each year.

(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) No permit is required for the application of regulated herbicides during the period beginning September 1 and ending May 15 of the following year.

(2) A permit for the application of all regulated herbicides is required for the period beginning May 16 and ending August 31 of each year.

(3) This subsection applies only to that portion of Dickens County that lies below the Caprock Escarpment.

(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 15 and October 15 of each year, with the exception of the spot application of dicamba by means of a pressurized hand held spray device, provided the user obtains a permit from the department prior to the use during the regulated period.

(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.

(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.

(1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.

(2) 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) Motley. No permit is required for the period of November 1 to May 14 of the following year.

(ii) 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.

(jj) 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.

(kk) 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.

(ll) 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.

(mm) San Patricio. No permit is required during the period beginning September 1 and ending March 1 of the following year. Application of regulated herbicides during the period of March 2 through August 31 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.

(nn) 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.

(oo) 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

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 commercial, non-commercial, or private applicator, nursery, greenhouse, a registrant or dealer 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.

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 (concerning licensing of dealers).

Source Note: The provisions of this §7.70 adopted to be effective December 4, 1997, 22 TexReg 11652.

RULE §7.71 Use Inconsistent with Label Directions

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;

(H) when 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;

(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.

(4) improper storage or disposal of the pesticide or its container.

(5) 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.