

AGRICULTURE CODE

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE B. HORTICULTURAL DISEASES AND PESTS

CHAPTER 76. PESTICIDE AND HERBICIDE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. DEFINITIONS. In this chapter:

(1) "Active ingredient" means:

(A) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(B) in the case of a plant regulator, an ingredient that through physiological action accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or the product of an ornamental or crop plant;

(C) in the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(D) in the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue.

(2) "Animal" means a vertebrate or invertebrate species, including man, other mammals, birds, fish, and shellfish.

(3) "Antidote" means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid.

(4) "Application of a herbicide" means the spreading of a herbicide on real property having a continuous boundary line.

(5) "Defoliant" means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

(6) "Department" means the Department of Agriculture.

(7) "Desiccant" means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

(8) "Device" means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a

pest or other form of plant or animal life, other than man or a bacteria, virus, or other microorganism on or in living man or other living animals. The term does not include equipment sold separately from a pesticide.

(9) "Distribute" means offer for sale, hold for sale, sell, barter, or supply.

(10) "Environment" includes water, air, land, plants, man, and other animals living in or on water, air, or land, and the interrelationships that exist among them.

(11) "Equipment" means any type of ground, water, or aerial equipment or contrivance employing motorized, mechanical, or pressurized power and used to apply a pesticide to land or to anything that may be inhabiting or growing or stored on or in the land. The term does not include a pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance for which the person applying the pesticide is the source of power or energy used in making the pesticide application.

(12) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.).

(13) "Fungus" means a non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, or bacteria, but not including a non-chlorophyll-bearing thallophyte on or in living man or other living animals or on or in a processed food, beverage, or pharmaceutical.

(14) "Inert ingredient" means an ingredient that is not an active ingredient.

(15) "Insect" means any of the numerous small invertebrate animals generally having a segmented body and for the most part belonging to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. The term includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(16) "Label" means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.

(17) "Labeling" means a label or any other written,

printed, or graphic matter prepared by a registrant:

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides.

(18) "Land" means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any used for transportation.

(19) "License use category" means a classification of pesticide use based on the subject, method, or place of pesticide application.

(20) "Nematode" means an invertebrate animal of the phylum Nematelminthes and class Nematoda (an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle) inhabiting soil, water, plants, or plant parts.

(21) "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(22) "Plant regulator" means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation, or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant, but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.

(23) "Registrant" means a person who has registered a pesticide under this chapter.

(24) "Regulatory agency" means a state agency with responsibility for certifying applicators under Subchapter E of this chapter.

(25) "Restricted-use pesticide" means a pesticide

classified as a restricted-use pesticide by the Environmental Protection Agency.

(26) "Thallophyte" means a non-chlorophyll-bearing plant of a lower order than mosses and liverworts.

(27) "Weed" means any plant that grows where not wanted.

(28) "Worker protection standard" means the federal worker protection standard as found in the Code of Federal Regulations, 40 C.F.R. Parts 156 and 170.

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

Sec. 76.002. PESTS. The department shall determine what organisms constitute pests for purposes of this chapter and may include in the list of pests:

(1) any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life; or

(2) any virus, bacteria, or other microorganism, other than a virus, bacteria, or other microorganism on or in living man or other living animals.

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

Sec. 76.003. STATE-LIMITED-USE PESTICIDES. (a) After notice and public hearing, the department may adopt lists of state-limited-use pesticides for the entire state or for a designated area within the state.

(b) A pesticide may be included on a list of state-limited-use pesticides if the department determines that, when used as directed or in accordance with widespread and commonly recognized practice, the pesticide requires additional restrictions to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide. However,

the department shall not place a pesticide on the state-limited-use list solely on the basis of actual damage or risk of damage to water quality without first obtaining approval from the Texas Natural Resource Conservation Commission based on the impact of the pesticide's use on water quality.

(c) The department shall formally request an opinion regarding impact on water quality from the Texas Natural Resource Conservation Commission during department consideration of any amendments to the current list of state-limited-use pesticides.

(d) At the direction of the Texas Natural Resource Conservation Commission in conjunction with its responsibilities pursuant to Chapter 26, Water Code, the department shall consider any formal request to add any pesticide to the state-limited-use list under Subsection (b), and the department shall issue regulations regarding the time, place, and conditions of such pesticide's use.

(e) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only:

(1) with permission of the department;

(2) under direct supervision of the department in certain areas under certain conditions; or

(3) in specified quantities and concentrations.

(f) The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records.

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

Sec. 76.004. DEPARTMENT RULES. (a) The department may adopt rules for carrying out the provisions of this chapter, including rules providing for:

(1) the collection, examination, and reporting of records, devices, and samples of pesticides;

(2) the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers;

(3) labeling requirements for pesticides and devices required to be registered under this chapter; and

(4) compliance with federal pesticide rules and regulations.

(b) Any rules adopted by the department for the purpose of protection or enhancement of water quality shall not be inconsistent with nor less stringent than rules adopted for the protection or enhancement of water quality by the Texas Natural Resource Conservation Commission pursuant to recommendations of the Texas Groundwater Protection Committee.

Acts 1981, 67th Leg., p. 1190, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 81, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.04, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 9.20, eff. September 1, 2009.

Sec. 76.006. PESTICIDE EXAMINATION AND TESTING. (a) The department may contract with a state college or university, state agency, or commercial laboratory for examination of a pesticide. The department shall let contracts with commercial laboratories under this subsection on the basis of competitive bidding.

(b) The department may make or provide for sample tests of a pesticide on request and may charge and collect a fee for the tests in an amount necessary to cover expenses incurred in making or providing for the tests.

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

Sec. 76.007. INTERAGENCY COOPERATION. (a) The department shall be the lead agency for pesticide regulation in Texas. In cooperation with the U.S. Environmental Protection Agency or any

federal agency responsible for implementation of federal pesticide law, the department shall:

- (1) register pesticides for use in Texas;
- (2) adopt lists of state-limited-use pesticides;
- (3) provide for training, certification, and licensure of all classes of pesticide applicators;
- (4) enforce pesticide laws and regulations governing the safe handling, use, storage, distribution, and disposal of pesticide products; and
- (5) adopt rules to carry out the provisions of this chapter.

(b) The Texas Natural Resource Conservation Commission shall have principal authority to regulate and control water pollution. If the United States Environmental Protection Agency adopts a final rule requiring states to implement a state management plan for pesticides in groundwater, the department shall cooperate with the Texas Groundwater Protection Committee in the committee's development and implementation of federally mandated state management plans for pesticides in groundwater in accordance with Section [26.407](#), Water Code.

(c) The department shall seek advice from the Texas Natural Resource Conservation Commission, the Parks and Wildlife Department, the Texas Department of Health, and the Texas Agricultural Extension Service in reviewing applications for special local need or emergency pesticide registrations. The department shall act expeditiously to review any application for special local need or emergency pesticide registrations.

(d) The department shall give written notice to the Texas Natural Resource Conservation Commission whenever it has probable cause to believe that serious contamination of water has occurred as a result of use, misuse, manufacture, storage, or disposal of pesticides so that the Texas Natural Resource Conservation Commission may proceed with an investigation of a possible violation of the Water Code.

(1) If the Texas Natural Resource Conservation Commission determines that a violation of the Water Code has occurred, the commission shall seek the remedies provided by the

Water Code.

(2) If the department determines that a violation of the Agriculture Code has occurred regarding the use, manufacture, storage, or disposal of pesticides, the department shall seek the remedies provided by this code.

(3) The foregoing remedies shall not be mutually exclusive.

(e) The Texas Natural Resource Conservation Commission shall give written notice to the department whenever it has probable cause to believe that serious contamination of water has occurred as a result of the use, misuse, storage, disposal, or manufacture of pesticides so that the department may proceed with an investigation to determine if a violation of the Agriculture Code has occurred.

(1) If the department determines that a violation of the Agriculture Code has occurred, the department shall seek the remedies provided by this code.

(2) If the Texas Natural Resource Conservation Commission determines that a violation of the Water Code has occurred, the Texas Natural Resource Conservation Commission shall seek the remedies provided by the Water Code.

(3) The foregoing remedies shall not be mutually exclusive.

(f) The department shall consult with the Texas Department of Health before denying or canceling a pesticide registration because of a suspected public health threat. The department shall also coordinate enforcement efforts with the department of health when a serious public health threat is suspected.

(g) A regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agency, an agency of this state, a subdivision of this state, or an agency of another state for the purpose of obtaining assistance in the implementation of this chapter.

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



Sec. 76.008. EXEMPTION. Sections 76.007, 76.104-76.106, 76.108-76.117, 76.151(b), 76.151(c), 76.154(b), 76.155, 76.181, 76.182, 76.184, and 76.201(d)(1) do not apply to a person who is regulated by Chapter 1951, Occupations Code.

Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.751, eff. Sept. 1, 2003.

Sec. 76.009. PESTICIDE DISPOSAL FUND. (a) The pesticide disposal fund is a fund in the state treasury outside the general revenue fund. The fund consists of:

(1) money deposited to the credit of the fund under Section 76.044; and

(2) interest earned on the investment of money in the fund.

(b) The department shall administer the fund. Money in the fund may be appropriated only for the purposes of the pesticide waste and pesticide container collection activities performed under Section 76.132.

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

#### SUBCHAPTER B. LABELING

Sec. 76.021. LABELING INFORMATION. (a) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:

(1) the label information required by FIFRA, if the pesticide is subject to registration under that law; or

(2) the following information, if the pesticide is not subject to registration under FIFRA:

(A) the name, brand, or trademark under which the pesticide is distributed;

(B) the name and percentage of each active ingredient and the total percentage of inert ingredients;

(C) directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;

(D) if the pesticide contains any form of arsenic, the percentage of total water-soluble arsenic, calculated as elementary arsenic;

(E) the name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;

(F) numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and

(G) a clear display of appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.

(b) The label bearing the ingredient statement under Subsection (a)(2)(B) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

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

Sec. 76.022. CONSPICUOUS LETTERING. Any word, statement, or information required by this chapter to appear on a label or in labeling of a pesticide or device registered by the department shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary conditions of use.

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

Sec. 76.023. MISBRANDED PESTICIDE OR DEVICE. (a) A pesticide or device is misbranded if:

(1) it is subject to registration under FIFRA and it does not fully comply with the labeling requirements of the United States Environmental Protection Agency; or

(2) it is not subject to registration under FIFRA and:

(A) its labeling bears a statement, design, or graphic representation relating to the pesticide or device, or the ingredients of either, that is false or misleading in any particular;

(B) it is an imitation of or is distributed under the name of another pesticide or device; or

(C) it is not conspicuously labeled in accordance with Section 76.022 of this code.

(b) A pesticide is misbranded if:

(1) its labeling bears any reference to registration under this chapter, unless the reference is required by a rule adopted under this chapter;

(2) it does not bear a label as required by Section 76.021 of this code; or

(3) its label does not bear information as required by Section 76.021 of this code or a rule adopted under this chapter.

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

#### SUBCHAPTER C. REGISTRATION

Sec. 76.041. REGISTRATION REQUIRED. (a) Except as provided by Subsection (b), (c), (d), or (e) of this section, before a pesticide is distributed in this state or is delivered for transportation or is transported in intrastate commerce or between points within this state through a point outside the state, it must be registered with the department. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.

(b) Registration is not required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used solely at the

second plant or warehouse as a constituent of a pesticide that is registered under this chapter.

(c) Registration is not required for a pesticide that is not for use in this state and is being manufactured, transported, or distributed for use only outside of this state.

(d) Registration is not required for a chemical compound being used only to develop plot data as to the possible pesticidal action of the chemical.

(e) Unless otherwise required by department rule, registration is not required for a pesticide that is exempt from registration with the United States Environmental Protection Agency under federal law.

(f) The Texas Feed and Fertilizer Control Service may not register under Chapter 63 a fertilizer that contains a pesticide that must be registered with the department under this chapter unless the constituent pesticide is first registered with the department. The Texas Feed and Fertilizer Control Service shall consult with the department about the current registration status of a pesticide before registering any fertilizer mix containing that pesticide under Chapter 63. The department shall notify the Texas Feed and Fertilizer Control Service of any changes to a pesticide registration.

(g) A pesticide that has been registered with the department must continue to be registered as long as the pesticide remains in the channels of trade in this state. The registrant shall ensure that the pesticide continues to be registered.

(h) If the department issues a stop use, stop distribution, or removal order because the pesticide is not registered with the department, the registrant shall take any necessary action to remedy the situation, including reimbursing a person who is subject to the order for the person's costs in complying with the order.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 6.02, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.042. CONTENT OF REGISTRATION APPLICATION. (a) The application for registration of a pesticide shall include:

(1) the name and address of the applicant and the name and address of the person whose name will appear on the pesticide label, if not the applicant's;

(2) the name of the pesticide;

(3) a complete copy of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use and, if the pesticide is required to be registered with the United States Environmental Protection Agency, a copy of the Environmental Protection Agency stamped accepted labeling and any applicable comment pages;

(4) the use classification, whether for restricted or general use, as provided by the federal Insecticide, Fungicide, and Rodenticide Act, as amended, or by a rule adopted under that Act;

(5) the use classification proposed by the applicant, if the pesticide is not required by federal law to be registered under a use classification; and

(6) other information required by the department for determining the eligibility for registration.

(b) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(c) The department may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide that is not registered under federal law or for which federal or state restrictions on use are being considered.

(d) A person located outside this state, as a condition to registration of a pesticide, shall file with the department a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the person may designate in writing the secretary of state as the recipient of service of process for the person in this state.

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

Sec. 76.043. EXPIRATION AND RENEWAL. (a) Registration of a pesticide expires on the second anniversary of the date of its approval or renewal except that the department shall by rule adopt a system under which registrations expire on various dates during the year.

(b) A person who applies for renewal of registration shall include in the renewal application only information that is different from the information furnished at the time of the most recent registration or renewal.

(c) A registration in effect on its expiration date for which a renewal application has been filed and renewal fee has been paid continues in effect until the department notifies the applicant that the registration has been renewed or denied renewal. Acts 1981, 67th Leg., p. 1193, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 6.03, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.044. FEES. (a) The department shall charge a fee, as provided by department rule, for each pesticide to be registered. The fee must be submitted with an application for registration or renewal of registration.

(b) A person who fails to apply for renewal of registration on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code for each brand to be renewed.

(c) Of the money received by the department under this section, the department shall annually deposit to the credit of the pesticide disposal fund under Section 76.009 an amount to cover the cost of administering the pesticide waste and pesticide container collection activities performed under Section 76.132, not to exceed \$400,000. The department may not increase the amount of a fee under this section for purposes of this subsection or Section 76.132. Acts 1981, 67th Leg., p. 1193, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4284, ch. 682, Sec. 5, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 230, Sec. 83, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.08, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.35, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1025 (H.B. [191](#)), Sec. 2, eff. September 1, 2019.

Sec. 76.045. REGISTRATION FOR SPECIAL LOCAL NEED. (a) The department may register a pesticide for additional uses and methods of application not covered by federal registration but not inconsistent with federal law, for the purpose of meeting a special local need.

(b) Before approving a registration under this section, the department shall determine that the applicant meets the other requirements of this subchapter.

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

Sec. 76.046. DENIAL OR CANCELLATION OF REGISTRATION. (a) If the department has reason to believe that any use of a registered pesticide is in violation of a provision of this chapter or is dangerous or harmful, the department shall determine whether a hearing shall be held under Section [12.032](#) on denial or cancellation of registration.

(b) The department shall issue written notice of a hearing under this section to the registrant of the pesticide. The notice must contain a statement of the time and place of the hearing. The hearing shall be held after the 10th day following the day on which the notice is issued.

(c) After opportunity at the hearing for presentation of evidence by interested parties, the department may deny or cancel the registration of the pesticide if the department finds that:

(1) use of the pesticide has demonstrated uncontrollable adverse environmental effects;

(2) use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;

(3) even if properly used, the pesticide is detrimental to vegetation, except weeds, to domestic animals, or to

public health and safety;

(4) a false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature; or

(5) the registrant has not complied or the pesticide does not comply with a requirement of this chapter or a rule adopted under this chapter.

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

Sec. 76.047. EXPERIMENTAL USE PERMIT. (a) The department may issue an experimental use permit if the department determines that the applicant needs the permit in order to accumulate data necessary to register a pesticide under this chapter.

(b) A person may file an application for an experimental use permit before or after applying for registration.

(c) Use of a pesticide under an experimental use permit is under the supervision of the department and is subject to the terms and conditions, and valid for a period of time, prescribed by the department in the permit.

(d) The department may charge a fee for issuing a permit under this section in an amount equal to the amount charged for registration under Section 76.044(a).

(e) The department may revoke an experimental use permit at any time if the department finds that:

(1) the terms or conditions of the permit are being violated; or

(2) the terms and conditions of the permit are inadequate to avoid any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide.

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



SUBCHAPTER D. LICENSING OF DEALERS

Sec. 76.071. LICENSE REQUIRED. (a) A person may not distribute in this state a restricted-use or state-limited-use pesticide or regulated herbicide without a valid current pesticide dealer license issued by the department.

(b) Except as otherwise provided by this section, a pesticide dealer must obtain a license for each location in the state that is used for distribution. If the person does not have a place of business in this state, the person may obtain one license for all out-of-state locations, but shall file as a condition to licensing a designation of an agent for service of process as provided by Section 76.042(d) of this code.

(c) A person must apply for a pesticide dealer license on forms prescribed by the department.

(d) A pesticide dealer may not distribute a restricted-use or state-limited-use pesticide or a regulated herbicide except to:

- (1) a person licensed as a commercial applicator, noncommercial applicator, or private applicator;
- (2) an individual working under the direct supervision of a licensed applicator;
- (3) a certified private applicator;
- (4) a licensed pesticide dealer; or
- (5) a person who is licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners.

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

Sec. 76.072. EXPIRATION. A pesticide dealer license expires on the second anniversary of the date of its granting or renewal unless the department by rule adopts a system under which licenses expire on specified dates during a year.

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

Sec. 76.073. FEES. (a) An application for a pesticide dealer license must be accompanied by a registration fee, as fixed by the department.

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

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

Sec. 76.074. DISPLAY OF DEALER LICENSE. (a) Each dealer shall prominently display the pesticide dealer license in the dealer's place of business.

(b) Failure to display a license as required by this section is a ground for revocation of the license.

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

Sec. 76.075. RECORDS. (a) A person required to obtain a dealer's license by Section 76.071 shall record each distribution of a restricted-use or state-limited-use pesticide or regulated herbicide and shall maintain a copy of the record for at least two years after the date of the distribution.

(b) The department shall adopt rules that prescribe the information to be stated in the records required by this section.

(c) The department may require that a copy of the records required by this section be submitted periodically to the department.

(d) The department may revoke a dealer's license if the licensee fails to submit a copy of a record as required under Subsection (c) or makes false or fraudulent records, invoices, or reports.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981.

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

Sec. 76.076. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department may deny an application for a dealer's license if the applicant fails to comply with this chapter. The department may revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation; or

(2) limit business to the areas prescribed by the department.

(c) If the department proposes to deny a person's application for a pesticide dealer license or to revoke, modify, or suspend a person's license, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

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

Sec. 76.077. EXCEPTIONS. (a) This subchapter does not apply to a manufacturer or formulator of a pesticide who does not sell directly to the user.

(b) This subchapter does not apply to a licensed pesticide applicator who:

(1) distributes restricted-use or state-limited-use pesticides or regulated herbicides only as an integral part of the pesticide application business; and

(2) dispenses the pesticides only through equipment used in the pesticide application business.

(c) This subchapter does not apply to a federal, state, county, or municipal agency that provides pesticides only for its own programs.

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

#### SUBCHAPTER E. USE AND APPLICATION

Sec. 76.101. COORDINATION. (a) The department is the lead agency in the regulation of pesticide use and application and is responsible for coordinating activities of state agencies, except as provided by Section 76.007(b) of this code and by Chapter 26 of the Water Code. The department shall submit a state plan for the licensing of pesticide applicators to the administrator of the Environmental Protection Agency.

(b) The department shall coordinate, plan, and approve training programs and shall use the public and private resources of this state, including state universities, colleges, junior colleges, community colleges, the Texas Agricultural Extension Service, and the Texas Agricultural Experiment Station. The department and the Texas Agricultural Extension Service shall adopt a memorandum of understanding to jointly coordinate, plan, and approve the training programs for private applicators.

(c) The department shall make plans under this section on the basis of convenience to applicants, thoroughness of preparation and testing, and maximum economy in expenditures for this purpose. The department shall make full use of grants-in-aid and cooperative agreements in administering this subchapter.

(d)(1) Except as otherwise provided by this subsection, no city, town, county, or other political subdivision of this state shall adopt any ordinance, rule, or regulation regarding pesticide sale or use.

(2) Nothing in this subsection shall be construed to limit the authority of a city, town, or county to:

(A) encourage locally approved and provided educational material concerning a pesticide;

(B) zone for the sale or storage of such products;

(C) adopt fire or building regulations as preventative measures to protect the public and emergency services personnel from an accident or emergency involving such products, including regulations governing the storage of such products or governing fumigation and thermal insecticidal fogging operations;

(D) provide or designate sites for the disposal of such products;

(E) route hazardous materials; or

(F) regulate discharge to sanitary sewer systems.

(3) This subsection shall not prevent a city, town, county, or any political subdivision from complying with any federal or state law or regulation. This subsection shall not prevent a city, town, county, or any political subdivision from attaining or maintaining compliance with federal or state environmental standards including Texas water quality standards. A city, town, county, or other political subdivision may take any action otherwise prohibited by this subsection in order to comply with any federal requirements, to avoid any federal or state penalties or fines, or to attain or maintain federal or state environmental standards including Texas water quality standards. Acts 1981, 67th Leg., p. 1196, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 86, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 96, Sec. 1, eff. May 7, 1993; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.102. AGENCIES RESPONSIBLE FOR LICENSING PESTICIDE APPLICATORS. The department shall license pesticide applicators involved in the following license use categories:

(1) agricultural pest control, including animal pest control;

(2) forest pest control;

(3) ornamental and turf pest control, except as

provided by Chapter [1951](#), Occupations Code;

- (4) seed treatments;
- (5) right-of-way pest control;
- (6) regulatory pest control;
- (7) aquatic pest control;
- (8) demonstration pest control;
- (9) health-related pest control; and

(10) other license use categories as necessary to comply with federal requirements. The department may not adopt license use categories that are designated by statute for regulation by another agency.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1278 (H.B. [1530](#)), Sec. 1, eff. September 1, 2009.

Sec. 76.103. PROGRAM CONTINGENT ON FEDERAL FUNDS. (a) The licensing of commercial applicators, noncommercial applicators, and private applicators is contingent on the availability of federal funds to pay part of the costs of administering and enforcing the program.

(b) If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the department shall certify that fact and discontinue the licensing of commercial applicators, noncommercial applicators, and private applicators. The department shall publish notice of the discontinuance of the program in the Texas Register.

(c) If sufficient funds become available after discontinuance, the department shall certify the availability of sufficient funds to pay all costs of administration and enforcement of the program and shall resume the licensing of commercial applicators, noncommercial applicators, and private applicators. The department shall publish notice of resumption of the program in

the Texas Register.

(d) The department shall determine the effective date of discontinuance or resumption of the program, but the date may not be before the date of publication of notice in the Texas Register.

(e) During any period in which the program has been discontinued, a person is not required to have a license provided by this subchapter in order to use pesticides, but a person may be prosecuted for acts committed or omitted when the program was in effect.

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

Sec. 76.104. AGENCY RULES FOR APPLICATION OF A PESTICIDE.

(a) The head of each regulatory agency may, after notice and public hearing, adopt rules to carry out the provisions of this subchapter for which the agency is responsible.

(b) Rules adopted under this section may:

(1) prescribe methods to be used in the application of a restricted-use or state-limited-use pesticide or regulated herbicide;

(2) relate to the time, place, manner, method, amount, or concentration of pesticide application or to the materials used in pesticide application; and

(3) restrict or prohibit use of a restricted-use or state-limited-use pesticide or regulated herbicide in designated areas during specific periods of time.

(c) A regulatory agency may adopt a rule under this section only after consideration of precautions or restrictions necessary to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

(d) The department shall adopt worker protection standards for pesticides if there is no federal worker protection standard. The department may adopt other rules for the protection of the health, safety, and welfare of farm workers and pesticide handlers.

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

Sec. 76.105. LICENSE REQUIRED. (a) Except as provided by Section 76.003(e), a person may not purchase or use a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is:

(1) licensed as a commercial applicator, noncommercial applicator, or private applicator and authorized by the license to purchase or use the restricted-use or state-limited-use pesticide or regulated herbicide in the license use categories covering the proposed pesticide use;

(2) an individual acting under the direct supervision of a licensed applicator, except as provided by Subsection (b) of this section and by Sections 76.003(e) and 76.116(f); or

(3) a certified private applicator as defined in Section 76.112(j) of this code.

(b) An individual is under the direct supervision of a licensed applicator if the individual is acting under the instructions and control of a licensed applicator who is responsible for the actions of the individual and who is available if and when needed. A licensed applicator may not supervise an applicator whose license or certificate is under suspension or revocation. The licensed applicator is not required to be physically present at the time and place of the pesticide application unless the label of the applied pesticide states that the presence of the licensed applicator is required.

(c) A licensed applicator is responsible for assuring that the person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of pesticides. A licensed applicator satisfies the requirements of this subsection if the person working under the licensee's direct supervision has been trained as a handler under the federal worker protection standard.

(d) A person who is authorized under this chapter to use restricted-use or state-limited-use pesticides or regulated



herbicides shall comply with all applicable federal and state rules, regulations, and court orders regarding the use of restricted-use or state-limited-use pesticides or regulated herbicides.

(e) Except as provided by Section 76.003(e), a person may not purchase a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is a licensed or a certified applicator or authorized by a licensed or certified applicator to purchase or take delivery for the applicator.

(f) The other provisions of this section notwithstanding, the department may adopt rules or establish programs that the U.S. Environmental Protection Agency or another federal agency requires as a condition for receiving:

(1) approval to authorize use of certain restricted-use or state-limited-use pesticides or regulated herbicides;

(2) federal funding for licensing or certification of pesticide applicators;

(3) federal funding for pesticide law enforcement efforts; or

(4) other federal funding related to pesticide risk reduction.

(g) The other provisions of this chapter notwithstanding, if the U.S. Environmental Protection Agency or another federal agency imposes on the state standards for certification of commercial, noncommercial, or private pesticide applicators, the department may adopt by rule the federal standards for each classification of applicators for which the federal standards are imposed.

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

Sec. 76.106. CLASSIFICATION OF LICENSES. (a) The head of each regulatory agency may classify commercial applicator and noncommercial applicator licenses under subcategories of license

use categories according to the subject, method, or place of pesticide application.

(b) A regulatory agency head shall establish separate testing requirements for licensing in each license use category for which the agency is responsible and may establish separate testing requirements for licensing in subcategories within a license use category.

(c) Each regulatory agency may charge a testing fee, as fixed by the head of the regulatory agency, for testing in each license use category.

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

Sec. 76.107. LICENSING BY MORE THAN ONE AGENCY. (a) A person who wants to be licensed as a pesticide applicator under license use categories regulated by more than one regulatory agency may do so by paying a single license fee to the agency regulating the person's primary business and meeting licensing requirements for each category for which the person desires licensing.

(b) A person licensed under this section must pay testing fees required by each regulatory agency.

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

Sec. 76.108. COMMERCIAL APPLICATOR LICENSE. (a) A person who operates a business or is an employee of a business that applies state-limited-use or restricted-use pesticides or regulated herbicides to the land of another person for hire or compensation and who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a commercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.

(b) A person shall apply for an original or renewal commercial applicator license on forms prescribed by the regulatory agency. The application shall include information as required by rule of the head of the agency and must be accompanied by an annual license fee, as fixed by the head of the agency.

(c) The head of a regulatory agency may not issue an original commercial applicator license before the applicant has passed an examination under Section 76.110 of this code.

(d) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted of a felony involving moral turpitude in the last five years;

(2) the applicant has had a license issued under this subchapter revoked within the last two years;

(3) the applicant has been unable to satisfactorily fulfill licensing requirements; or

(4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this subchapter applicable to the license use category for which application is made.

(e) An individual to whom a commercial applicator license is issued is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the individual is licensed.

(f) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

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

Acts 1995, 74th Leg., ch. 419, Sec. 2.38, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.109. NONCOMMERCIAL APPLICATOR LICENSE. (a) A person who is required to be licensed under Section 76.105 of this code but who does not qualify as a commercial applicator or a private applicator shall apply to the appropriate regulatory agency for a noncommercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.

(b) A person shall apply for an original or renewal noncommercial applicator license on forms prescribed by the regulatory agency. The applicant shall include with the application an annual license fee, as fixed by the governing body of or the head of the regulatory agency. The governing body of or the head of the regulatory agency may set other fees as necessary to defray the costs of administering a pesticide applicator certification program.

(c) The head of a regulatory agency may not issue an original noncommercial applicator license before the applicant has passed an examination under Section 76.110 of this code.

(d) An individual to whom a noncommercial applicator license is issued by the department is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the individual is licensed.

(e) If a license is issued in the name of a governmental entity, the entity must have a licensed applicator employed at all times. Failure to have a licensed applicator employed is a ground for revocation of a governmental entity noncommercial applicator license.

(f) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of

state as the recipient of service of process for the applicant in this state.

(g) An individual to whom a noncommercial applicator license is issued by the Texas Department of Health is authorized to use and supervise the use of general-use, restricted-use, and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(h) Neither this section nor any other law shall prohibit a political subdivision from reducing the number of hours of training or other requirements for an employee conducting larval mosquito control on property owned or controlled by the political subdivision using biological pesticides approved for general use by the Texas Department of Health, provided the employee is given instructions adequate to ensure the safe and effective use of such pesticides.

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

Sec. 76.1095. NONCOMMERCIAL APPLICATOR LICENSE FOR MOSQUITO CONTROL IN BORDER COUNTIES. (a) The department by rule shall provide for the issuance of a noncommercial applicator license that authorizes a person to purchase and use restricted-use and state-limited-use pesticides for the limited purpose of mosquito control in a county located along the international border with Mexico. To the extent practicable, the department shall minimize the fees and other requirements to obtain the license.

(b) A person may apply to the department for an original or renewal noncommercial applicator license described by Subsection (a). A person must apply on forms prescribed by the department and include a fee in an amount determined by the department.

(c) The department shall issue a noncommercial applicator

license described by Subsection (a) to an applicant who meets the license requirements provided by department rule.

(d) The department may solicit and accept gifts, grants, and donations to implement and administer this section. The department shall coordinate with appropriate federal agencies, state agencies, nonprofit organizations, public and private hospitals, institutions of higher education, and private entities in identifying and soliciting funding to implement and administer this section.

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

Sec. 76.110. COMMERCIAL AND NONCOMMERCIAL APPLICATOR EXAMINATION; RECIPROCAL AGREEMENTS. (a) Each person applying for a license as a commercial applicator or a noncommercial applicator must pass an examination demonstrating that the person:

(1) is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility; and

(2) has knowledge of the use and effects of restricted-use and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the person is to be licensed.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this section, the appropriate regulatory agency shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the appropriate regulatory agency shall notify examinees of the results of the examination not later than the 14th day after the date on which the appropriate regulatory agency receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the appropriate regulatory agency shall notify the examinee of the reason for the delay before the 90th day. The appropriate regulatory agency may require a testing service to

notify examinees of the results of an examination.

(c) If requested in writing by the person who fails a licensing examination administered under this section, the appropriate regulatory agency shall furnish the person with an analysis of the person's performance on the examination.

(d) The appropriate regulatory agency may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state.

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

Sec. 76.111. APPLICATOR BUSINESSES; PROOF OF FINANCIAL RESPONSIBILITY. (a) In this section:

(1) "Applicator business" means a person who applies a state-limited-use or restricted-use pesticide or regulated herbicide to the land of another for compensation and who:

(A) is a licensed commercial applicator; or

(B) employs at least one licensed commercial applicator.

(2) "M-44 device" means a nonexplosive, spring-operated mechanical device designed to deliver a capsule of sodium cyanide into the mouth of the target animal as a method of livestock predation control.

(b) This section does not apply to an employee or agent of an applicator business.

(c) Except as otherwise provided by this section, each applicator business shall file with the regulatory agency issuing the license a liability insurance policy, certification of a policy, or other proof of financial responsibility considered acceptable by the department protecting persons who may suffer damages as a result of the operations of the applicator business, its employees, and its agents.

(d) The proof of financial responsibility required by this

section is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicator business, its employees, or its agents.

(e) Except as otherwise provided by this section, the amount of the proof of financial responsibility may not be less than \$100,000 for each occurrence for property damage and may not be less than \$100,000 for each occurrence for bodily injury or a general aggregate at a minimum of \$200,000 for each occurrence. The head of a regulatory agency by rule may require different amounts of coverage for different classifications of operations under this chapter. Each commercial M-44 applicator license applicant must provide proof of financial responsibility acceptable to the department for bodily injury and property damage coverage insuring the applicator against liability for damage to persons or property occurring as a result of operations performed in the course of the application to premises or any other property under the applicator's care, custody, or control. The department will strive to set minimum acceptable coverage at an amount that is economically feasible to applicants. The coverage must at all times be maintained at not less than the amount set by the agency head or the Texas Department of Insurance.

(f) The head of a regulatory agency may accept a liability insurance policy in the proper sum which has a deductible clause in an amount of not more than \$1,000 for the total amount of the liability insurance policy required by this section. If the applicator business has not satisfied the requirement of the deductible amount in any prior legal claim, an agency head may not accept a policy with a deductible clause unless the applicator business furnishes the agency with a surety bond that satisfies the amount of the deductible clause as to all claims that may arise as a result of the operation of the applicator business.

(g) An applicator business shall cease state-limited-use or restricted-use pesticide or regulated herbicide application operations during a period in which the applicator business is unable to provide adequate proof of financial responsibility under Subsection (e).

Acts 1981, 67th Leg., p. 1200, ch. 388, Sec. 1, eff. Sept. 1, 1981.



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

Sec. 76.112. PRIVATE APPLICATOR. (a) A person is a private applicator if the person uses or supervises the use of a restricted-use or state-limited-use pesticide or regulated herbicide for the purpose of producing an agricultural commodity:

(1) on property owned or rented by the person or the person's employer or under the person's general control; or

(2) on the property of another person if applied without compensation other than the trading of personal services, or services related to agricultural production, including the use of equipment, between producers of agricultural commodities.

(b) A private applicator is required to be either licensed or certified to use restricted-use or state-limited-use pesticides or regulated herbicides.

(c) An employee qualifies as a private applicator under Subsection (a)(1) of this section only if he is employed to perform other duties related to agricultural production and provide labor for the pesticide application but does not provide the necessary equipment or pesticide.

(d) A private applicator who is required to be licensed by Section 76.105 of this code shall apply to the department for a private applicator license.

(e) A person shall apply for an original or renewal private applicator license on forms prescribed by the department. The application shall include information as required by department rule and must be accompanied by a fee, as fixed by the department.

(f) The department may not issue an original private applicator license before the applicant has attended a training course conducted by the Texas Agricultural Extension Service or another training course approved by the department. The department shall approve appropriate training courses developed under the

coordination of the Texas Agricultural Extension Service and to be conducted by other governmental agencies or nongovernmental entities. The training course shall cover the use, effects, and risks of restricted-use and state-limited-use pesticides or regulated herbicides.

(g) The department may not issue a private applicator license if the applicant has had a license issued under this subchapter revoked within the last two years.

(h) An individual to whom a private applicator license is issued is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.

(i) As a condition to issuance of a private applicator license, an applicant located outside this state shall file with the department a written instrument designating a resident agent for service of process in actions taken in administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

(j) For purposes of this chapter, a certified private applicator is a private applicator who has been previously certified under the department's voluntary certification program and who holds a private applicator certificate dated prior to January 10, 1989. A certified private applicator is authorized to use restricted-use and state-limited-use pesticides or regulated herbicides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section. A certified private applicator may not supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides.

Acts 1981, 67th Leg., p. 1200, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 7, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 96, eff. Sept. 1,

1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.40, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.113. TERM AND RENEWAL OF LICENSES. (a) Each pesticide applicator license issued under this chapter, other than a private applicator license, expires at the end of the license period established by department rule.

(b) Each private applicator license is valid for five years.

(c) Except as provided by Subsection (d) of this section, a person having a valid license issued under this subchapter may renew the license for another term without retesting by paying to the regulatory agency the license fee required by this subchapter. A person who fails to apply for renewal of a license on or before the expiration date must pay, in addition to the annual license fee, the late fee provided by Section 12.024 of this code.

(d) A licensee must undertake training, submit to retesting, or both, before renewal of a license if the head of the agency determines that additional knowledge is required for renewal.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 8, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 97, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 44 (H.B. 901), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.04, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.05, eff. September 1, 2009.

Sec. 76.114. RECORDS. (a) A regulatory agency shall require each commercial and noncommercial applicator licensee to maintain records of all pesticide applications. The department may require each commercial or noncommercial applicator licensee to keep records of the licensee's application of a specific restricted-use or state-limited-use pesticide or regulated

herbicide and may require those records to be kept separate from other business records. The regulatory agency by rule shall prescribe the information to be entered into the records.

(b) Each private applicator shall maintain records of regulated herbicide and state-limited-use pesticide applications and shall maintain those records of restricted-use pesticide applications required by federal law.

(c) A licensee shall keep records required under this section for a period of two years from the date of the pesticide application. The licensee shall keep these records accessible and available for copying and shall store them in a location suitable to preserve their physical integrity.

(d) On written request of the regulatory agency, a licensee shall furnish the department a copy of any requested record pertaining to the application of pesticides. The department may require all persons who apply a regulated herbicide to submit periodically to the department a copy of the records required by this section.

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

Sec. 76.115. INSPECTION OF EQUIPMENT. (a) Each regulatory agency may inspect equipment used in the application of a restricted-use or state-limited-use pesticide.

(b) A regulatory agency may require repairs or alterations of equipment before further use in the application of restricted-use or state-limited-use pesticides.

(c) The department by rule may:

(1) provide requirements for and inspect equipment used to apply regulated herbicides; and

(2) regulate or prohibit the use of certain equipment in the application of regulated herbicides if that use would be hazardous in an area of the state.

(d) Each piece of registered equipment shall be identified by a license plate or decal furnished by a regulatory agency at no cost to the licensee. The license plate or decal must be attached

to the equipment in a manner and location prescribed by the regulatory agency.

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

Sec. 76.116. SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSE. (a) The head of a regulatory agency that licensed or certified an applicator may suspend, modify, or revoke a license or certificate, assess an administrative penalty, place on probation a person whose license or certificate has been suspended, reprimand a licensee or certificate holder, or take a combination of those actions if the head of the agency finds that the licensee or certificate holder has:

(1) made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state or the Environmental Protection Agency;

(2) operated in a faulty, careless, or negligent manner;

(3) refused, or after notice, failed to comply with an applicable provision of this chapter, a rule adopted under this chapter, or a lawful order of the head of a regulatory agency by which the licensee is licensed;

(4) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required by this chapter;

(5) failed to maintain financial responsibility as required by this chapter;

(6) made false or fraudulent records, invoices, or reports;

(7) used fraud or misrepresentation in making an application for a license or renewal of a license; or

(8) aided or abetted a certified, licensed, or an unlicensed person to evade the provisions of this chapter, conspired with a certified, licensed, or an unlicensed person to evade the provisions of this chapter, or allowed the licensee's

license or the certificate holder's certificate to be used by another person.

(b) A regulatory agency may temporarily suspend a license or certificate under this section for not more than 10 days after giving the licensee or certificate holder written notice of noncompliance.

(c) If a license or certificate suspension is probated, the regulatory agency may require the person to:

(1) report regularly to the agency on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the agency; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the agency in those areas that are the basis of the probation.

(d) Except for a temporary suspension under Subsection (b) of this section, if the regulatory agency, except for the department, proposes to not renew, suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing before a hearings officer designated by the agency. The agency shall prescribe procedures by which all decisions to not renew, suspend, modify, or revoke are appealable to the governing officer or board of the agency.

(e) Except for a temporary suspension under Subsection (b) of this section, if the department proposes to not renew, suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing conducted as provided under Section [12.032](#). The decision of the department is appealable in the same manner as provided for contested cases under Chapter [2001](#), Government Code.

(f) An applicator whose license or certificate is under suspension or revocation by a regulatory agency may not apply restricted-use or state-limited-use pesticides or regulated herbicides under the direct supervision of another licensed applicator during that period of suspension or revocation.

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

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

Sec. 76.117. PROPERTY OWNER USE. This chapter does not prohibit a property owner from using in the property owner's house, lawn, or garden a pesticide that is labeled for that use, other than a pesticide that may be registered or classified for use only by certified applicators.

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

Sec. 76.118. EXEMPTION FOR LICENSED VETERINARIANS. The other provisions of this chapter notwithstanding, a person who is licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners and who is only using a restricted-use or state-limited-use pesticide or a regulated herbicide as a drug or medication during the course of the veterinarian's normal practice or as a private applicator may not be required to obtain a license under this chapter to purchase or use the restricted-use or state-limited-use pesticide or regulated herbicide.

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

Sec. 76.119. DISCLOSURE OF INFORMATION RELATING TO PRIVATE PESTICIDE APPLICATOR LICENSE HOLDERS. (a) In this section, "predator control device" means a device that incorporates an active ingredient and is used for the control of livestock predators.

(b) Except as provided by Subsection (c), a governmental entity in this state may not disclose:

(1) the name, address, or telephone number of a person who holds a private pesticide applicator license issued under this subchapter and is authorized to use a predator control device if disclosure of the person's name, address, or telephone number would reveal that the person:

(A) is authorized to use a predator control device;

(B) has used a predator control device; or

(C) has the intent to use a predator control device;

(2) the name, address, or telephone number of the owner or operator of land on which a predator control device has been used, is being used, or is intended to be used, if disclosure of the information would reveal that use or intended use; or

(3) information identifying the land on which a predator control device has been used, is being used, or is intended to be used, if disclosure of the information would reveal the name, address, or telephone number of the owner or operator of the land.

(c) A governmental entity may disclose to the following the name, address, or telephone number of a person who holds a private pesticide applicator license issued under this subchapter, who is authorized to use a predator control device, and who either has used a predator control device or has the intent to use a predator control device:

(1) a person who holds a pesticide dealer license under Section 76.071 and is authorized to distribute predator control devices;

(2) another governmental entity in this state in connection with official business;

(3) the United States Environmental Protection Agency under a cooperative agreement entered into with that agency;

(4) any other agency of the United States that provides the governmental entity with an administrative or judicial subpoena for the information; or

(5) the appropriate agency or court in an administrative or judicial proceeding in which the private pesticide applicator license holder is a defendant.

(d) A governmental entity and the officers and employees of the governmental entity are immune from civil or criminal liability for an unintentional violation of this section.

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

Sec. 76.120. EMERGENCY MOSQUITO CONTROL BY CERTAIN MUNICIPAL OR COUNTY EMPLOYEES. (a) A municipal or county health department may apply for a waiver from the department authorizing



the application of pesticides for mosquito control in the manner provided by this section if:

(1) the municipality or county is in a state of disaster as declared by the governor under Chapter 418, Government Code; or

(2) the municipal or county health department determines that immediate action is needed to control the threat of mosquito-borne disease.

(b) On application by a municipal or county health department, the department may grant a waiver authorizing unlicensed employees of the municipality or county to apply pesticides for mosquito control under the direct supervision of a licensed applicator employed by the municipality or county, a nearby political subdivision, this state, or the federal government.

(c) An unlicensed employee of the municipality or county may apply pesticides as authorized by a waiver if the unlicensed employee and the licensed applicator supervising the employee execute an affidavit promulgated by the department describing the supervision arrangement and return the affidavit to the department. Added by Acts 2019, 86th Leg., R.S., Ch. 344 (S.B. 1113), Sec. 1, eff. May 31, 2019.

#### SUBCHAPTER F. STORAGE AND DISPOSAL

Sec. 76.131. RULES. (a) The department may adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of:

(1) preventing injury from storage or disposal to man, vegetation, crops, or animals; and

(2) preventing any water pollution that is harmful to man or wildlife provided, however, that such rules be consistent with and not less stringent than Texas Natural Resource Conservation Commission rules adopted under Chapter 26 of the Water Code.

(b) A person may not store or dispose of a pesticide in violation of a rule adopted by the department under this section.

(c) Applicators and other entities covered by this chapter who normally store products listed under the FIFRA in an amount that exceeds 55 gallons, 500 pounds, or a lesser amount the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter, within one-quarter mile of a residential area composed of three or more private dwellings for more than 72 hours, shall provide to the fire chief of the fire department having jurisdiction over the storage place, in writing, the name and telephone number of the applicator or a knowledgeable representative of the applicator or other entity storing the product who can be contacted for further information or contacted in case of emergency.

(d) On request, each applicator or entity shall provide to the fire chief having jurisdiction over the storage place a copy of a list of pesticides stored by the applicator or entity. The applicator or other entity shall notify the fire chief of any significant changes that occur relating to the stored pesticides if requested by the fire chief in writing.

(e) The fire chief having jurisdiction over the storage place or the fire chief's representative, on request, shall be permitted to conduct on-site inspections of the pesticides stored for the sole purpose of preparing fire department activities in case of an emergency.

(f) On request, the fire chief having jurisdiction over the storage place shall make the stored pesticide list available to members of the fire department having jurisdiction over the workplace and to personnel outside the fire department who are responsible for preplanning emergency activities, but may not otherwise distribute the information without approval of the applicator.

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

Sec. 76.132. DISPOSAL OF PESTICIDE. The department, in coordination with the Texas Commission on Environmental Quality and

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

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

#### SUBCHAPTER G. HERBICIDES

Sec. 76.141. REGULATED HERBICIDES. (a) After a public hearing on the issue, and in accordance with Subsection (b), the department by rule may adopt a list of regulated herbicides for the state or for one or more designated areas in the state.

(b) The department may include a herbicide on the list of regulated herbicides if the department determines that, if used as directed or in accordance with widespread and commonly recognized practice, the herbicide requires additional restrictions to prevent a hazard to desirable vegetation caused by drift or an uncontrolled application.

(c) A person may not distribute a regulated herbicide unless the person holds a dealer's license issued by the department.

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

Sec. 76.142. APPLICATION OF REGULATED HERBICIDE. (a) If a person applies a regulated herbicide, the person shall act in accordance with each applicable rule adopted by the department, including a rule adopted under this subchapter.

(b) If a regulated herbicide is applied by a commercial applicator, the person in control of the crop or land to which the regulated herbicide is applied and the commercial applicator are jointly responsible for ensuring that the application is in

compliance with this chapter and each applicable rule adopted by the department.

(c) If the department finds that an application of a regulated herbicide is hazardous to crops or valuable plants in an area, the department may prohibit the application of a regulated herbicide in that area for any period during which the hazard exists.

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

Sec. 76.143. PUBLIC HEARING. As soon as practicable after receiving a written request for a revision of a rule, an exemption from a requirement of this chapter, or a prohibition of the spraying of a regulated herbicide in an area, the department may hold a public hearing to hear the request.

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

Sec. 76.144. COUNTY HERBICIDE REGULATIONS. (a) If the commissioners court of a county determines that a valuable crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide exists in an area of the county and that a departmental rule adopted or prohibition prescribed under Section 76.141 or 76.142 not currently applicable to the area should apply to the area, the commissioners court may enter an order in the minutes of the court under which the department's rule or prohibition under Section 76.141 or 76.142 becomes effective in the specified area of the county beginning January 1 of the following year.

(b) If the commissioners court of a county determines that there is no longer a valuable crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide in the specified area of the county, the court may rescind its order under Subsection (a) effective January 1 of the following year.

(c) The department shall adopt rules concerning the use of a regulated herbicide in a county in which the commissioners court has entered an order under Subsection (a) of this section.

(d) The department may immediately suspend a rule of the

department regarding the application dates of a regulated herbicide in an area of a county if:

(1) the commissioners court of the county established the applicability of the rule by adopting an order as provided by Subsection (a);

(2) the commissioners court requests that the department immediately suspend the rule; and

(3) the department determines that an imminent threat to agricultural interests exists in the county and if that threat is not immediately addressed by a suspension of the department's rule a significant economic loss will result.

(e) Before the commissioners court of a county may enter an order under this section, the commissioners court shall hold a hearing to determine whether the order should be issued. Before the 10th day before the date on which the hearing is to be held, the commissioners court shall publish notice of the hearing in at least one newspaper in the county.

(f) The commissioners court shall transcribe the hearing and make findings of fact based on the hearing and conclusions of law to support its order in the manner prescribed for a final order or decision in a contested case under Chapter 2001, Government Code.

(g) Before the 21st day after the date on which an order under Subsection (a) is entered, an interested person may appeal the order to a district court in the county to test the reasonableness of the basis for the commissioners court order. The provisions of Subchapter G, Chapter 2001, Government Code, that apply to the judicial review of a contested case under the substantial evidence rule apply to the appeal, except that the appeal is brought in a district court for the county in which the appealed order applies. An appeal may be taken from the district court as in other civil cases.

(h) The commissioners court of the county shall notify the department of a change in the status of a county or a portion of a county under this section.

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

SUBCHAPTER H. ENFORCEMENT

Sec. 76.151. ENTRY POWER. (a) The department, at any time and without notice during regular business hours, may:

(1) enter and inspect a building or place owned, controlled, or operated by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code; and

(2) inspect and review any record maintained by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code.

(a-1) The department may enter and inspect a building or place or inspect and review any record under Subsection (a) as necessary to:

(1) ensure compliance with this chapter or Chapter 1951, Occupations Code; or

(2) investigate a complaint made to the department.

(b) A regulatory agency is entitled to enter any public or private premises at reasonable times to:

(1) inspect any equipment authorized or required to be inspected under this chapter or to inspect the premises on which the equipment is kept or stored;

(2) inspect or sample land exposed or reported to be exposed to a pesticide;

(3) inspect an area where a pesticide is disposed of or stored; or

(4) observe the use and application of a restricted-use or state-limited-use pesticide or regulated herbicide.

(c) If a regulatory agency is denied access to any land to which access was sought at a reasonable time for any of the purposes listed in Subsection (b) of this section, the head of the regulatory agency may apply to a magistrate for a warrant authorizing access to the land for any of those purposes. On a showing of probable cause to believe that a violation of a rule relating to a purpose listed in Subsection (b) of this section has occurred, the magistrate shall issue the search warrant for the purposes requested.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.06, eff. September 1, 2009.

Sec. 76.152. SAMPLING. The department is entitled to take a sample for official analysis from any package or lot of pesticides found within this state.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981.

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

Sec. 76.153. STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER.

(a) If the department has reason to believe that a pesticide is in violation of any provision of this chapter, the department may issue and enforce a written or printed order to stop the use or distribution of the pesticide or requiring the pesticide to be removed and secured from further distribution. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order may not sell, distribute, or use the pesticide until the department determines that the pesticide:

(1) is in compliance with this chapter; or

(2) does not present a hazard to the public health, safety, or welfare.

(b) This section does not limit the right of the department to proceed as authorized by another section of this chapter.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981.

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

Sec. 76.154. INJUNCTION. (a) The department may sue in the name of the commissioner to enjoin any violation of a provision of this chapter. Venue is in the county in which the alleged violation occurred or is occurring.

(b) A regulatory agency may request an appropriate prosecuting attorney or the attorney general to sue to enjoin a

violation or threatened violation of a provision of this chapter that is within the agency's responsibility.

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

Sec. 76.155. PROSECUTIONS. The department may request the appropriate prosecuting attorney to prosecute a violation of a provision of this chapter.

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

Sec. 76.1555. ADMINISTRATIVE PENALTY. (a) If a person violates a provision of this chapter or Chapter 1951, Occupations Code, or a rule or order adopted by the department under this chapter or Chapter 1951, Occupations Code, the department may assess an administrative penalty against the person as provided by Section 12.020, except that the penalty for each violation may not exceed \$5,000. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment.

(b) The department shall establish a schedule stating the types of violations possible under this chapter. The department is not required to comply with Subchapter B, Chapter 2001, Government Code, when establishing or revising the schedule. The department shall publish the initial schedule and any subsequent revision in the Texas Register before the schedule or revision is implemented.

(c) If the department elects to assess an administrative penalty, no action for a civil penalty may be based on the same violation or violations.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 101, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (58), (59), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.16, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.



Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.07, eff. September 1, 2009.

Sec. 76.156. CIVIL PENALTY. (a) A person who violates a provision of this chapter administered by a regulatory agency other than the department or a rule adopted by a regulatory agency other than the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000 for each day on which the violation occurs.

(b) A person who violates a provision of this chapter administered by the department or a rule adopted by the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$10,000 for each violation, provided that the penalty shall not exceed \$25,000 for all violations related to a single incident.

(c) No civil penalty may be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was or was not successful in collecting the administrative penalty.

(d) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a civil penalty provided by this section.

(e) The appropriate regulatory agency may request an appropriate prosecuting attorney or the attorney general to bring suit under this section.

(f) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

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

1997.

#### SUBCHAPTER I. REMEDIES

Sec. 76.181. APPEAL OF DENIAL OR CANCELLATION OF PESTICIDE REGISTRATION. A person whose application for registration of a pesticide has been denied or whose registration for a pesticide has been canceled may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.

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

Sec. 76.182. APPEAL OF PERMIT OR LICENSE DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION. A person whose application for an experimental use permit, pesticide dealer license, commercial applicator license, noncommercial applicator license, or private applicator license has been denied or whose experimental use permit, pesticide dealer license, commercial applicator license, noncommercial applicator license, private applicator license, or private applicator certificate has been suspended for more than 10 days, revoked, or modified may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.

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

Sec. 76.183. APPEAL OF STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER. (a) The owner or custodian of a pesticide to which a stop use, stop distribution, or removal order is imposed under Section 76.153 may appeal the order to a court of competent jurisdiction in the county where the pesticide is found.

(b) Appeal under this section is by trial de novo.

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

Sec. 76.184. REPORTS OF PESTICIDE ADVERSE EFFECTS. (a) A person claiming adverse effects from an application of a pesticide may file with the appropriate regulatory agency a complaint report. The complaint report must contain the name of the person, if known, allegedly responsible for the application of the pesticide and the name of the owner or lessee of the land on which the pesticide was applied. The regulatory agency shall prepare a form printed in English and Spanish to be furnished to persons for use in filing complaint reports. The form may contain other information that is within the person's knowledge and requested by the head of the regulatory agency.

(b) As soon as practicable after receiving a complaint report, the regulatory agency shall notify the licensee, the owner or lessee of the land on which the alleged application occurred, and any other person who may be charged with responsibility for the adverse effects claimed. The regulatory agency shall furnish copies of the complaint to those people on request.

(c) To assess any adverse effects, the complaining party shall permit the regulatory agency and the licensee to observe, within reasonable hours, the land or nontarget organism alleged to have been adversely affected.

(d) Failure to file a complaint does not bar a civil or criminal action from being filed and maintained.

(e) The regulatory agency by rule may adopt procedures to be followed in the investigation of a report claiming adverse effects from an application of the pesticide.

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

Sec. 76.185. DAMAGES RESULTING FROM APPLICATION OF PESTICIDE UNDER GOVERNMENT PROGRAM. Notwithstanding other law, the owner or lessee of land on which a pesticide is applied is not

responsible for damages resulting from the application of the pesticide or subject to a criminal or civil penalty in connection with the application of the pesticide if:

(1) the pesticide is applied under a local, state, or federal government program that requires the application of the pesticide to the land; and

(2) the owner or lessee of the land on which the pesticide is applied does not control or have a right to control the time and manner of the application of the pesticide to the land.

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

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

#### SUBCHAPTER J. PENALTIES

Sec. 76.201. OFFENSES. (a) A person commits an offense if the person distributes within this state or delivers for transportation or transports in intrastate commerce or between points within this state through a point outside this state, any of the following:

(1) a pesticide that has not been registered as provided by this chapter, except for a pesticide that is not for use in this state and is only being manufactured, transported, or distributed for use outside of this state;

(2) a pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(3) a pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by Section 76.021 of this code;

(4) a pesticide:

(A) that is of strength or purity that falls below the professed standard or quality expressed on its labeling or under which it is sold;

(B) for which a substance has been substituted wholly or in part;

(C) of which a valuable constituent has been wholly or in part abstracted; or

(D) in which a contaminant is present in an amount that is determined by the department to be a hazard;

(5) a pesticide or device that is misbranded; or

(6) a pesticide in a container that is unsafe due to damage.

(b) A person commits an offense if the person:

(1) detaches, alters, defaces, or destroys, wholly or in part, any label or labeling provided for by this chapter or a rule adopted under this chapter before the container has been emptied and rinsed properly;

(2) adds any substance to or takes any substance from a pesticide in a manner that may defeat the purpose of this chapter or a rule adopted under this chapter;

(3) uses or causes to be used a pesticide contrary to its labeling or to a rule of the department limiting the use of the pesticide;

(4) handles, transports, stores, displays, or distributes a pesticide in a manner that violates a provision of this chapter or a rule adopted by the department under this chapter; or

(5) disposes of, discards, or stores a pesticide or pesticide container in a manner that the person knows or should know is likely to cause injury to man, vegetation, crops, livestock, wildlife, or pollinating insects.

(c) A person other than a person to whom the pesticide is registered commits an offense if the person uses for the person's advantage or reveals, other than to a properly designated state or federal official or employee, a physician, or in emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under this chapter and marked as privileged or confidential by the registrant.

(d) A person commits an offense if the person:

(1) commits an act for which a certified applicator's license may be suspended, modified, revoked, or not renewed under

Section 76.116 of this code; or

(2) violates any provision of this chapter to which this section does not expressly apply.

(e) A person commits an offense if the person:

(1) knowingly or intentionally uses, causes to be used, handles, stores, or disposes of a pesticide in a manner that causes injury to man, vegetation, crops, livestock, wildlife, or pollinating insects;

(2) violates Section 76.071(a);

(3) has a permit to apply a powder or dry-type regulated herbicide and applies a herbicide that does not meet the requirements of Section 76.144(c);

(4) violates a rule adopted under this chapter; or

(5) fails to keep or submit records in violation of this chapter.

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

Sec. 76.202. PENALTY. (a) Except as provided by Subsection (b) of this section, an offense under Section 76.201 of this code is a Class C misdemeanor, unless the person has been previously convicted of an offense under that section, in which event the offense is a Class B misdemeanor.

(b) An offense under Section 76.201(e) of this code is a Class A misdemeanor, unless the person has been previously convicted of an offense under that subsection, in which event the offense is a felony of the third degree.

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

Sec. 76.203. DEFENSES. (a) It is a defense to prosecution

under this subchapter that the defendant:

(1) is a carrier who was lawfully engaged in transporting a pesticide or device within this state and who, on request, permitted the department to copy all records showing the transactions in and movement of the pesticide or device;

(2) is a public official of this state or the federal government who was engaged in the performance of an official duty in administering state or federal pesticide law or engaged in pesticide research;

(3) is the manufacturer or shipper of a pesticide that was for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides and the manufacturer or shipper held a valid experimental use permit as provided by this chapter; and

(4) manufactured or formulated a pesticide or device solely for export to a foreign country and prepared or packed the pesticide or device according to the specifications or directions of the purchaser.

(b) It is a defense to prosecution under Section [76.201\(a\)\(3\)](#) of this code that the defendant is an applicator who, after acquiring an unbroken container, opened and transported the open container to and from application and storage sites as necessary.

(c) It is an affirmative defense to prosecution under Section [76.201\(e\)](#) of this code that the defendant was using, causing to be used, handling, storing, or disposing of the pesticide in accordance with a label that complied with this chapter and rules adopted under this chapter.

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