

# Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 8. Agricultural Hazard Communication Regulations

#### • 4 TAC §§8.1-8.12

The Texas Department of Agriculture (TDA) proposes new §§8.1-8.12, concerning implementation of the Agricultural Hazard Communication Act.

TDA is authorized to regulate the use of pesticides under the Texas Pesticide Act, (Chapter 76 of the Texas Agricultural Code) and the Agricultural Hazard Communication Act (the Act), (Chapter 125 of the Texas Agricultural Code).

With the passage of the Agricultural Hazard Communication (Right to Know) Act by the 70th Legislature and generally effective January 1, 1988, Texas became the first state to adopt a comprehensive program to inform agricultural workers and employers about the effects of pesticide exposure and ways to minimize health risks.

This legislation was passed in response to litigation challenging the exclusion of coverage of agriculture workers from the state's Hazard Communication Act. The legislation also represents a compromise among Texas Farm Bureau, Texas Agricultural Chemicals Association, the United Farm Workers, AFL-CIO, the Texas Farmers Union and Texas Civil Liberties Union. The goal of this new legislation was to fashion a pesticide safety program tailored to the unique needs of agricultural workers and employers in Texas. Another important purpose was to assist physicians in their diagnosis and treatment of pesticide poisonings and other related illnesses.

The Act contains many of the same provisions of the Hazard Communication Act—a Right to Know Law for industrial workers. The Agricultural Hazard Communication Act, however, specifically addresses the agricultural workplace, the typical relationships among different establishments in the production of agricultural and horticultural commodities, and the needs of a non English speaking and migrant workforce. The Act is also an extension of TDA programs under current pesticide laws.

These regulations are intended to clarify the rights and responsibilities of all entities affected by the Agricultural Hazard Communication Act, and define key terms of the Act. The regulations do not restate all provisions contained in the Act, but rather provide clarification of certain terms and procedures. Both

the Act and regulations must be read in conjunction to understand all rights and responsibilities created by the Act.

Proposed §8.1 sets forth the purposes of the regulations and explains the relationship of this Act to the Hazard Communication Act.

Proposed §8.2 provides definitions of key terms and words used in the Act and regulations.

Proposed §8.3 defines an agricultural laborer who plants, cultivates, harvests, or handles an agricultural or horticultural commodity in its unmanufactured state.

The department believes that the legislature intended that the scope of the Act cover all agricultural laborers as defined in the Act who are involved in activities which might bring workers into contact with plants, foliage, soil, and water treated with pesticides and potentially harmful residues. This includes workers who handle crops from the initial planting to packing and processing until they are ready to be shipped, delivered to market, frozen, canned or sold in retail depending on the crop.

The legislative intent, and the goal of the labor and producer groups involved in drafting the legislation, was to assure that all such workers are given appropriate safety information about hazardous pesticides and ways to minimize risks during the production of the commodity when exposure to pesticides might occur. The proposed regulations are drafted to fulfill this worker protection goal, and will require cooperation and sharing of information among various employers employing different agricultural laborers as discussed fully in proposed §8.4.

Equally clear is the legislature's intent to exempt certain types of laborers who handle an agricultural or horticultural commodity solely in retail sales or solely in livestock as defined in the chapter, persons who apply covered pesticides for hire, and laborers involved in mechanical harvesting where there is no substantial contact with a crop.

Proposed §8.4 sets out the criteria by which an employer is considered a covered employer responsible for complying with provisions of the Act to inform and protect workers who handle covered pesticide chemicals or commodities treated with covered pesticide chemicals. As previously discussed, the legislature's intent was to provide a comprehensive system of protection for agricultural laborers who may be subjected to hazards from pesticides in the course of their work.

This section recognizes the practical reality that there are different types of relationships that may exist between different agricultural establishments in Texas who are all involved in the production of commodities in their un-

manufactured state. Each entity plays a different role in preparing the commodity for market.

It is possible that one agricultural establishment may handle all phases of the production of a commodity to prepare it for market. In the majority of situations in Texas, however, several employers are jointly engaged in diverse activities necessary to produce the commodity. Such joint employment relationships are common in agriculture and have often been addressed by federal and state courts.

Clearly, an employer who meets both the chemical quantity and the payroll criteria is a covered employer. As proposed, a farm operator who does not meet the chemical quantity minimum is exempted from the requirements of these regulations. A farm operator who meets the chemical quantity minimum is a covered employer if the operator's payroll or the combined payroll of the farm operator and a second employer (such as a packing shed) jointly producing the crop exceeds the minimum payroll requirement. The proposed section sets forth different responsibilities for each employer to ensure that the information required to be compiled and provided to agricultural workers is made available.

This section also defines "causes to be used" to include purchasing, sharing the cost of, or recommending the use of the chemical(s) in producing a commodity. Thus, a second employer who causes a covered pesticide chemical to be used may meet the chemical quantity minimum and may be a covered employer if he also meets the payroll minimum.

The department is particularly interested in receiving comments on this critical section to make this requirement as clear, practical and fair as possible to achieve the overriding goal of worker protection.

Proposed §8.5 defines the rights of different types of designated representatives and the process of certification.

Proposed §8.6 defines a Material Safety Data Sheet (MSDS), the responsibilities of chemical manufacturers, registrants, and distributors to provide current MSDS's to persons, including the department, in Texas. This section provides that covered employers shall maintain and make available MSDS upon request for all pesticides used and stored as provided by this law.

Proposed §8.7 defines a workplace chemical list and its attachments and sets out the responsibility of covered employers to compile and maintain a workplace chemical list for pesticides used or stored in excess of the amount specified in this subsection and to make these lists accessible to individuals entitled to this information. The section provides options for employers to maintain these re-

cords at their place of business or transfer them to TDA.

Proposed §8.8 sets out the contents of crop sheets and logical groupings of certain crops. This section provides for covered employers, responsibilities to provide crop sheets, ensure that specific sections are read to agricultural laborers, and inform laborers of the past and future pesticide applications and the expiration of their relevant reentry periods.

Proposed §8.9 requires that covered employers provide any protective clothing, equipment, or device specified by the product label, MSDS or crop sheet.

Proposed §8.10 provides that employers may not take any retaliatory action against an agricultural laborer for exercising any rights under the Act.

Proposed §8.11 sets out the responsibility of the department to develop an ongoing training program for agricultural laborers, and the shared responsibility of the department and the Texas Agricultural Extension Service to carry out training programs in different counties. The proposed section provides for a certification of completion of training for agricultural laborers. This section also provides for training materials for covered employers, their managers and labor contractors.

Proposed §8.12 set out responsibilities of covered employers, other farm operators and other entities who store covered pesticide chemicals to report storage to local fire chiefs to help in emergency planning.

Heather Ball, TDA economist, has determined that there will be fiscal implications as a result of administering and enforcing the new sections. The effect on state government for the first five-year period the sections are in effect will be an estimated additional cost of \$400,000 in 1988-1989, and \$400,000 per year in 1990-1993. For the first five-year period the proposed sections are in effect, there will be no fiscal implications for local government. There will be no cost of compliance to most small agricultural enterprises, as the Act sets minimum gross annual payroll thresholds of at least \$15,000 for seasonal or migrant workers or at least \$50,000 for permanent workers in order for farm operators to be covered. However, some small farm operators who engage in joint production with other employers may incur costs estimated at \$243 for 1988-1989 and \$106 per year for 1990-1993. The cost of compliance for small chemical manufacturers or distributors will be an estimated cost of \$1000 for 1988-1989 and \$100 per year from 1990-1993. The cost of compliance for large agricultural enterprises will be an estimated cost of \$487 for 1988-1989, and \$213 per year for 1990-1993. The cost of compliance for large chemical manufacturers or distributors will be an estimated cost of \$2,000 for 1988-1989 and \$200 per year for 1990-1993.

Ellen Widess, director, pesticide evaluation program, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will include improved health and safety for farmworkers, farmers, and farming communities; reduced injuries and illnesses caused by pesticides; better recognition and treatment of pesticide poisonings and other related conditions; and better access to information for emergency personnel who may have to respond in emer-

gencies. There is no anticipated cost to individuals who are required to comply with the sections as proposed.

The department invites public comments on this proposal. Comments may be submitted to Ellen Widess, Director, Pesticide Evaluation Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments will be accepted until September 22, 1988.

The Department plans to hold three public hearings to receive public comment on new §§8.1-8.12. The first of these hearings will be held on August 9, 1988, beginning at 10 a.m. at the Travis Building, 1700 Congress Avenue, Room Austin. A second hearing will be held on August 16, 1988, beginning at 10 a.m. at the McAllen Civic Center, 1300 South 10th Street, McAllen, Texas; and a third hearing will be held on August 30, 1988 beginning at 10 a.m. at the Lubbock Memorial Civic Center, 1501 6th Street, Lubbock, Texas.

New §§8.1-8.12 are proposed under Texas Agriculture Code, §125.014 which authorizes the Texas Department of Agriculture to adopt rules and administrative procedures reasonably necessary to carry out the purposes of the Agricultural Hazard Communication Act, Texas Agricultural Code, Chapter 125.

#### §8.1. General Provisions.

(a) Purposes. The purposes of these regulations are:

(1) to provide agricultural workers and their designated representatives with access to information regarding certain hazardous chemicals to which they may be exposed during their normal employment activities, during reasonably foreseeable emergency situations, or as a result of their close proximity to areas where those chemicals are used;

(2) to provide access to information regarding hazardous chemicals to certain emergency service organizations responsible for dealing with chemical hazards during emergency situations in close proximity to residential areas, to provide the department with access to information regarding chemicals covered by the Act and these regulations, and to provide members of the community with information about hazardous chemicals used or stored in close proximity to their residences; and

(3) to provide treating medical personnel and certain authorized persons, including persons conducting epidemiological research with access to information regarding chemicals covered by the Act and these regulations.

(b) Compliance with the Hazard Communication Act. A covered employer shall comply with the requirements of the Act and this chapter except insofar as the Hazard Communication Act, Texas Civil Statutes, Article 5182b, provides equivalent requirements and the covered employer is in compliance with those requirements.

§8.2. Definitions. In addition to the statutory definitions, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act—The Agricultural Hazard Communication Act, the Agriculture Code, Title 5, Subtitle G, Chapter 125. (Also known as the Agricultural Right to Know Act.)

Agricultural or horticultural commodity in its unmanufactured state—An agricultural or horticultural commodity is in its unmanufactured state until it leaves an agricultural establishment packaged for market. For horticultural commodities grown at the retail sales site, a commodity is in its unmanufactured state until it is sold and taken from the retail sales site. For cotton and grains, a commodity is in its unmanufactured state until it leaves the gin or other storage facility for market.

Covered pesticide chemical—Any substance containing any element, chemical compound, or mixture of elements or compounds registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §136 et seq.

Crop sheet—A document developed by the Department to fulfill the requirements of §125.010 of the Act.

Department—The Texas Department of Agriculture Distribute—Offer for sale, hold for sale, sell, barter, or supply.

Distributor—Any business, other than a chemical manufacturer that supplies covered pesticide chemicals to other distributors or to purchasers.

Employer—

(A) Any person who:

(i) operates an agricultural establishment;

(ii) contracts with the operator of an agricultural establishment in advance of, during, or after production for the purchase of a crop and uses a covered pesticide chemical on an agricultural or horticultural commodity in its unmanufactured state; or

(iii) either directly or indirectly recruits, solicits, hires, employs, utilizes, furnishes, or supervises agricultural laborers, and is responsible for the management and condition of an agricultural establishment.

(B) The term "agricultural establishment" as used in this chapter means a business operation that uses paid agricultural laborers in the production of an agricultural or horticultural commodity in its unmanufactured state.

(C) For purposes of this Act an agricultural laborer can have more than one employer.

**Farm operator**—The person responsible for the overall control and management of the crop.

**Handle, handling**—Work involving bodily contact with plants, soil, or other sources of pesticide residue which includes, but is not limited to, planting, drying, packing, packaging, processing, freezing, grading, fumigating, hand harvesting, thinning, hoeing, sorting or preparing for market of any agricultural or horticultural commodity in its unmanufactured state.

**Licensed pesticide dealer**—Any person who is licensed under the Texas Agriculture Code, Title 7, §§76.071–76.077.

**Livestock**—Beef and dairy cattle, hogs, sheep, goats, poultry of all kinds, horses, rabbits, bees, exotic game animals, and fur-bearing animals in captivity.

**Medical emergency**—Any health or safety related occurrence designated as a medical emergency by treating medical personnel.

**Member of the community**—Any individual who resides or is employed within a three mile radius of a covered employer's workplace.

**Nursery worker**—

(A) A laborer employed in a nursery operation, whether licensed or unlicensed, who is engaged in the following activities:

(i) sowing seeds and otherwise propagating shrubs, vines, flowers, and fruit, nut, shade, vegetable, and ornamental plants or trees;

(ii) handling such plants to and from fields; or

(iii) planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

(B) A worker involved solely in the retail aspect or solely in a lawn care service is not considered a nursery worker for purposes of these regulations.

**Person**—Any individual, partnership, association, joint stock company, trust, cooperative, corporation, or other business entity.

**Produce**—The act of performing any of the activities specified in the definition of agricultural laborer found at §8.3 (Relating to Agricultural Laborer).

**Registrant**—Any person who has submitted an application for regis-

tration of a pesticide under the Texas Agriculture Code, Title 7, §§76.041–76.048.

**Safety emergency**—Any health or safety related occurrence designated as a safety emergency by a fire chief or his representative.

**Service**—The Texas Agricultural Extension Service

**Store, storage**—To have at the work area for a period of time greater than 72 hours.

**Treating medical personnel**—Doctor, nurse, emergency technician, clinic personnel, or hospital personnel treating an individual in connection with a possible exposure to a covered pesticide chemical.

**Uses**—Uses or causes to be used.

**Work Area**—A room, defined space, field, section, or farm where covered pesticide chemicals are stored or used and where agricultural laborers may be present.

**Workplace**—A geographical location containing one or more work areas.

**Work Season**—Crop season.

§8.3. *Agricultural Laborer.*

(a) The terms "agricultural laborer" or "laborer" as used in this chapter mean an individual who does one or more of the following activities on a farm, including a tree farm or a sod farm, ranch, processing establishment, cannery, gin, packing shed, grain warehouse, greenhouse or nursery:

(1) plants, cultivates, harvests, or handles an agricultural or horticultural commodity in its unmanufactured state. Agricultural laborers include, but is not limited to, field workers who plant, weed, thin, cultivate, detassel, hoe, irrigate, harvest, tie vines, nursery workers and workers who load trucks to take the commodity from the field to the packing shed and workers at the packing shed who handle the commodity;

(2) uses a covered pesticide chemical as part of his duties as an agricultural laborer on the farm, including, but not limited to, mixing, loading, or applying a covered pesticide chemical;

(3) may be exposed to a covered pesticide chemical because of his job assignment which includes, but is not limited to, maintenance workers who dispose of used pesticide containers on a farm, scouts and flaggers;

(4) plants, cultivates, grows, harvests, detassels, rogues or treats seeds or

seed plants of an agricultural or horticultural commodity.

(b) The definition of agricultural laborer does not include:

(1) farm and ranch laborers working solely with livestock;

(2) persons working solely in the retail sales component of a business, such as salespersons, brokers, and marketing personnel;

(3) office workers, cooks, maintenance workers, security personnel, and nonresident management, except for purposes of a gross annual payroll determination, unless their job performance routinely involves potential exposure to a covered pesticide chemical;

(4) licensed commercial applicators and their employers;

(5) workers involved in mechanical harvesting in which there is no substantial contract with the treated crop and where the relevant reentry interval has expired.

§8.4. *Covered Employer.*

(a) An employer is a "covered employer" if he annually uses or stores in excess of 55 gallons or 500 pounds of any one covered pesticide chemical, and either:

(1) himself, or through labor agents, hires agricultural laborers to perform seasonal or migrant work and whose gross annual payroll for those laborers is \$15,000 or more; or

(2) himself, or through labor agents, hires agricultural laborers for purposes other than seasonal or migrant work and whose gross annual payroll for those laborers is \$50,000 or more.

(b) A covered employer may be two or more agricultural establishments that jointly produce an agricultural commodity. In the event of joint production, the following standards shall apply.

(1) A farm operator who does not use or store in excess of 55 gallons or 500 pounds of a covered pesticide chemical is exempted from the requirements of these regulations.

(2) A farm operator who uses or stores in excess of 55 gallons or 500 pounds of a covered pesticide chemical is a covered employer, if the operator's payroll, or the combined payroll of the farm operator and a second employer, exceeds the payroll requirements of subsection (a) of this section. In this event, the farm operator shall compile and maintain a workplace chemical list, and provide crop sheet information to the farm operator's agricultural laborers. Further, the farm operator shall make the workplace chemical list available and provide crop sheet information to the second employer. The second employer shall be responsible for providing crop sheet information to the second employer's agricultural laborers.

(3) A second employer who uses, or causes to be used, a covered pesticide chemical in the production of an agricultural commodity shall count all such chemicals to determine whether in excess of 55 gallons or 500 pounds were used or stored. For purposes of this subsection, "uses or causes to be used" includes purchasing chemicals used or stored, sharing the cost of chemicals used or stored, or recommending chemicals to be used. A second employer who causes chemicals to be used or stored, and meets the requirements of subsection (a) of this section, is a covered employer.

(c) Hiring "through labor agents" includes an employer who contracts with a crewleader to provide harvesters or other agricultural laborers.

(d) An employer who purchases in excess of 55 gallons or 500 pounds of a covered pesticide chemical at one time or within a period of one calendar year is presumed to have used or stored in excess of 55 gallons or 500 pounds of a covered pesticide chemical.

#### §8.5. Designated Representative.

(a) Representative Designated by Written Authorization. A designated representative is an individual or organization to whom an agricultural laborer gives written authorization to exercise the laborer's rights under the Act and this chapter.

(b) Recognized or Certified Representatives.

(1) Certified collective bargaining agent. A certified collective bargaining agent is a person or unit that has been sanctioned by a governmental body to represent agricultural workers in matters of wages and working conditions. A certified collective bargaining agent is not required to have a written authorization from the agricultural laborer he represents.

(2) Recognized collective bargaining agent. A recognized collective bargaining agent is a person or unit that has been acknowledged in a contract between an employer and an agricultural laborer. A recognized collective bargaining agent is not required to have a written authorization from the agricultural laborer he represents.

(3) Certified designated representative. A certified designated representative is a person who has been approved for certification by the department. In order to become a certified designated representative, an individual shall submit a request for certification as a designated representative to the department. The request shall include the requester's name, the name of the agricultural laborer's employer, and a description of which rights of the laborer the designated representative intends to exercise. The laborer's written authorization shall be attached to the request and processed by the department as follows.

(A) The department shall review the request and determine whether to accept or reject it within two business days of receipt. If the department determines that the request has fulfilled the requirements of the Act and this chapter and that the agricultural laborer's employer is a covered employer, the department shall certify the requester as a designated representative. The designated representative remains certified until the agricultural laborer notifies the department that he has withdrawn his authorization. If the department rejects the request, the department shall notify the requester of the decision and give a statement of the reasons for the rejection. A person whose request has been rejected may attempt to address the reasons for rejection and ask that the request be reconsidered. Alternatively, the requester may appeal the rejection to the Commissioner. A person not satisfied with the decision of the Commissioner may appeal in the manner provided for contested cases under the Texas Administrative Procedure and Texas Register Act.

(B) A certified designated representative is not required to reveal to anyone other than the Department the identity of the agricultural laborer he represents. The Department shall maintain the laborer's anonymity, unless the laborer waives it.

(C) A covered employer shall recognize a requester as a designated representative after receiving notice of certification by the Department.

#### §8.6. Material Safety Data Sheet (MSDS).

(a) Defined. An MSDS is a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) standard for that document. In the case of a chemical labeled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §136 et seq., for which an MSDS is both unavailable and not required under the federal OSHA hazard communication standard, a product label, or other document equivalent to an MSDS, which contains precautionary statements, such as hazards to humans and domestic animals, and environmental, physical, or chemical hazards, including warning statements, may serve as an MSDS.

(b) Responsibilities of manufacturers and distributors

(1) A registrant, chemical manufacturer, distributor, or licensed Pesticide dealer, shall provide the most current appropriate material safety data sheet (MSDS), product label or equivalent documentation to any person in this state to whom he distributes a covered pesticide chemical.

(2) A chemical manufacturer or distributor shall provide, in a timely man-

ner, the most current appropriate MSDS to covered employers upon request.

(3) A registrant or chemical manufacturer shall ensure that all MSDSs for all covered pesticide chemicals he distributes are correct and current.

(4) A registrant shall provide with his registration application a copy of the most current appropriate MSDS for each pesticide for which he is applying for registration.

(5) A chemical manufacturer or distributor shall submit to the Department a copy of the most current appropriate MSDS for all fertilizers with covered pesticide chemicals.

(6) Retail outlets that distribute pesticide chemicals to the general public only for nonagricultural purposes are exempted from this section of this chapter.

(c) Responsibilities of covered employers.

(1) A covered employer is responsible for obtaining and maintaining the most current appropriate MSDS, product label, or equivalent documentation for each covered pesticide chemical he buys, applies, or causes another to apply.

(2) A covered employer who has not been provided with an MSDS for a covered pesticide chemical shall request the most current appropriate MSDS product label, or equivalent documentation in writing from the manufacturer or distributor in a timely manner.

(3) A covered employer shall make an MSDS, product label, or equivalent documentation for covered pesticide chemicals accessible to agricultural laborers, designated representatives, treating medical personnel, members of the community, the department, and emergency personnel.

#### §8.7. Workplace Chemical List.

(a) Defined. A workplace chemical list (WCL) is a form that must be completed with the information necessary required by §125.004 and §125.005 of the Act. In order to determine whether the covered pesticide chemical must be listed, a covered employer shall total the quantities of pesticide products containing the same active ingredient to determine whether more than the minimum requirement of 55 gallons or 500 pounds is actually used or stored annually in the workplace. The following documents shall be attached to the workplace chemical list:

(1) The MSDS for each chemical listed on the WCL, or in the case for which an MSDS is both unavailable and not required under the federal OSHA hazard communication standard, a product label, or equivalent documentation;

(2) Crop sheets and other health and safety data provided by the department

that the covered employer has been required to distribute to his agricultural laborers.

(b) Responsibility to compile and maintain a workplace chemical list.

(1) The department shall prescribe a form for the workplace chemical list required by the Act. The form shall include places in which a covered employer shall list the name of the crop(s), the product name of all covered pesticide chemicals that are applied to the crop and/or stored at the workplace in excess of the specified amount, an estimate of the amount of the product applied and estimate of the number of acres treated, the locations and dates of the application of all covered pesticide chemicals used, and the storage locations of the covered pesticide chemicals at the workplace. The department may approve a computerized format if the format fulfills the requirements of the Act.

(2) A covered employer shall compile and maintain a workplace chemical list for covered pesticide chemicals as specified in subsection (a) of this section.

(3) The covered employer may choose to maintain a single list for each crop, each work area, or each workplace, provided that the list contains sufficient information to identify the date and location of pesticide application(s) and the name(s) of the pesticide(s) applied.

(4) If the list is compiled by workplace containing various work areas in different counties, copies of the list shall be kept at the place of business closest to the work area.

(5) The covered employer is responsible for obtaining the workplace chemical list form from a department District Office and is not relieved of his duties under the Act and this chapter because he has not received a form from the department.

(6) A covered employer's responsibility to maintain a workplace chemical list includes the entering of information regarding the application of covered pesticide chemicals as they are applied, used or stored in excess of the amounts specified in subsection (a) of this section.

(7) The covered employer shall either:

(A) maintain workplace chemical lists and attachments at the principal place of business in Texas for 30 years; or

(B) transfer workplace chemical lists and attachments to the department and then file those documents annually with the department.

(8) Any covered employer who wishes to transfer these records to the department shall include the covered employer's identification number. Records should

be sent to the Texas Department of Agriculture, Right To Know Program, P. O. Box 12847, Austin, Texas 78711. The department shall issue a receipt acknowledging records have been received from the covered employer.

(9) If the department determines that a covered employer has repeatedly failed to maintain the workplace chemical list and its attachments as required, the department may require the covered employer to annually file the list and attachments with the department.

(10) If a workplace ceases to be used for the agricultural activities for which the workplace chemical list and attachments are required, the covered employer shall send the workplace chemical lists and attachments to the Texas Department of Agriculture, Right to Know Program, P. O. Box 12847, Austin, Texas 78711.

(11) If the agricultural activities for which the workplace chemical list and attachments are maintained continue at a workplace but the covered employer is succeeded or replaced in function by another person, the successor shall comply with the provisions of this subsection. The successor is not liable for violations of the Act or this chapter committed by his predecessor unless the transaction(s) leading to the transfer were undertaken for the purpose of avoiding responsibility for violations of the Act or these regulations.

(c) Access to the workplace chemical list.

(1) A covered employer shall make the workplace chemical list and attachments accessible to an agricultural laborer, a designated representative, treating medical personnel, or a member of the community. The term, "accessible" as used in this chapter means:

(A) in nonemergency conditions, the term "accessible" means that the documents or information shall be provided to a requestor for reading or copying, within a reasonable period of time, but in no event more than two normal working days from the time of a reasonable request. The term "reasonable request" as used in this section means a request made orally or in writing during normal working hours at the workplace or the employer's place of business;

(B) in the case of a medical or safety emergency, the term "accessible" means that the document or information shall be given immediately to requestor authorized by the Act and this chapter regardless of when the request is made.

(2) A designated representative or treating medical personnel is not required to identify who he is representing or treating.

(3) Before a covered employer allows an agricultural laborer to work with

a covered pesticide chemical or in a work area where a covered pesticide chemical is used or stored, the covered employer shall inform the agricultural laborer orally or in writing of the existence of the workplace chemical list and its location.

(4) If the covered employer has filed the workplace chemical list with the department, he shall inform the requestor that the requested workplace chemical list is available from the department and provide the department's address.

(5) If a covered employer refuses to make accessible the workplace chemical list and attachments to anyone authorized under the Act and this chapter to make such a request, that person may notify the appropriate District office of the department of his request and of the covered employer's refusal.

(6) When the department is notified that a covered employer has refused to provide a copy of a Workplace Chemical List and attachments to an agricultural laborer, a designated representative, treating medical personnel, or member of the community, the department shall, within two working days from the day of receiving the notice, request the covered employer to provide the department with the list and attachments. The department's request to the covered employer may be either oral or written.

(7) If the department, on behalf of an agricultural laborer, a designated representative, or treating medical personnel requests a copy of the workplace chemical list and attachments from the covered employer, the covered employer shall provide the copy to the department within 24 hours of the request.

(8) If the department, on behalf of a member of the community, requests a copy of the workplace chemical list and attachments from the covered employer, the covered employer shall provide the copy to the department within 14 days of the request.

(d) The department workplace chemical list files.

(1) The department may request a copy of any workplace chemical list and attachments from any covered employer.

(2) The department shall maintain and preserve the data from each workplace chemical list and attachments filed, for 30 years.

(3) The department shall make this data available upon request to an agricultural laborer, designated representative, member of the community, treating medical personnel, and other medical and health care personnel.

**§8.8. Crop Sheets.**

(a) Development of crop sheets.

(1) The department shall develop crop sheets which contain informa-

tion including pesticides most commonly used on that crop, the pesticides acute and chronic health effects, ways to minimize pesticide exposure, recommended medical emergency measures, and agricultural laborers' rights.

(2) For purposes of developing crop sheets and complying with other provisions of the Act and this chapter, the department will consider each of the following logical groupings to be a single crop:

- (A) nursery stock;
- (B) citrus; and
- (C) stored grain.

(3) The information on the crop sheets shall be in both English and Spanish.

(4) The department may provide crop sheets in other languages commonly used by agricultural laborers who work with a particular crop.

(5) The department shall annually provide to each covered employer copies of appropriate crop sheets for crops grown in the relevant region. If a covered employer has not received a crop sheet for any crop that he grows, the covered employer shall request appropriate crop sheets from the local district office of the department or the service.

(6) The department shall update and distribute crop sheets as significant new information becomes available.

(b) Providing and reading crop sheets to laborers.

(1) A covered employer shall provide and ensure that the appropriate information on the crop sheet is read to each agricultural laborer and to each laborer assigned to a new crop. The most current crop sheets for the crops the laborer will be working with shall be provided and read on the first day of the work season or the first day the laborer begins employment, whichever is later. The covered employer shall provide and ensure that the appropriate information on the crop sheet is read prior to the time the laborer begins to work.

(2) A covered employer shall ensure that the information on the crop sheet(s) indicated by check marks is read to each agricultural laborer in either Spanish or English, as appropriate, on the first day of the work season or the first day the laborer begins employment, whichever is later.

(3) A covered employer shall inform all agricultural laborers including each laborer who is assigned to a different crop, job, or location of the following:

(A) the product name of the covered pesticide chemical, the date and

time it was last applied to the work area, the expiration date of its reentry interval; and

(B) the product name of the covered pesticide chemical(s) scheduled to be applied to the work area, the scheduled date and time of application, and its reentry interval.

(4) A covered employer does not have to provide or read the crop sheet, to agricultural laborer(s) who have a card issued under §125.009(g) of the Act.

(5) A covered employer shall provide crop sheets to any agricultural laborer upon request.

**§8.9. Providing Protective Clothing, Equipment, and Devices.** A covered employer shall provide for use and at no cost, to each agricultural laborer any protective clothing, equipment, or device that is specified on the label. If the label does not specify protective clothing, then the covered employer shall provide the protective clothing, equipment or device specified in the most current appropriate MSDS, crop sheet, or as provided in §7.25 of this title (relating to Scope of Pesticide Application Standards), whichever is more protective.

**§8.10. Retaliation.**

(a) A covered employer may not take any retaliatory actions against any agricultural laborer because the laborer has made an inquiry, filed a complaint, assisted the department's inspectors, instituted any proceeding under or related to the Act or this chapter, testified or is about to testify in such a proceeding, or exercised any rights afforded under the Act or this chapter on behalf of himself or on behalf of others. Under this section retaliatory actions include discharge, cause to be discharged, discipline, adversely affect the agricultural laborer's pay, position, seniority, or other benefits.

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

**§8.11. Training Program.**

(a) Development of training program. The department, in conjunction with the service, shall develop an on-going training program for agricultural laborers.

(b) Training provided by the department.

(1) The department shall provide the training program in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The counties are as follows: Bexar, Cameron, Dawson, Ft. Bend, Gaines, Gonzales, Hale, Hidalgo, Lamb, Lubbock, Smith, Starr, and Terry.

(2) The department shall provide training in the following additional counties which it has determined as having a significant farm labor work force: Castro,

Floyd, Frio, Hockley, Pecos, Uvalde, Willacy, and Zavala.

(c) Training provided by the service. The service shall provide training in all remaining counties.

(d) Notification of training. The department or the service shall notify agricultural laborers on a regular basis of the availability of training programs.

(e) Certification of completion of training.

(1) When an agricultural laborer completes a training program, the training agency shall provide him with a card stating the laborer's name, the location of the training program, and the date that the laborer completed the training.

(2) The training agency shall keep a record of all agricultural laborers who complete the training program.

(3) A covered employer shall not refuse to hire an agricultural laborer solely because the laborer has not completed a training program or cannot produce a card.

(f) Access to training materials by covered employers.

(1) The department shall prepare appropriate training materials for covered employers, their managers, and their labor contractors.

(2) These training materials may be obtained from the district offices of the department or the service.

(3) The department shall collect a fee of \$10 for these training materials, plus when appropriate, the cost of a blank videotape cassette.

**§8.12. Emergency Response.**

(a) Covered employers.

(1) A covered employer who normally stores covered pesticide chemicals within 1/4 mile of a residential area composed of three or more private dwellings shall provide to the fire chief of the fire department having jurisdiction over the storage place the name(s) and telephone number(s) of a knowledgeable representative(s) of the covered employer who can be contacted for further information or in case of an emergency. This information shall be in writing.

(2) A covered employer, upon reasonable request, shall provide a copy of the workplace chemical list and attachments to the fire chief having jurisdiction over the storage place.

(3) A covered employer shall notify the fire chief of any significant changes in any workplace chemical list, including changes in the types of covered pesticide chemicals being stored, a substantial increase in the volume of covered pesticide chemicals, a change in the storage location of covered pesticide chemicals, or



a change in the identity of the employer's representative.

(4) A covered employer shall allow the fire chief having jurisdiction over the storage place, or his representative, upon reasonable request, to conduct on-site inspections of the chemicals on the workplace chemical list to prepare fire department emergency response activities.

(b) Other farm operators and other entities.

(1) Farm operators who are not covered employers and other entities who normally store covered pesticide chemicals in an amount in excess of 55 gallons or 500 pounds within one-quarter mile of a residential area composed of three or more private dwellings shall provide to the fire chief having jurisdiction over the storage area, in writing, the name(s) and telephone number(s) of a knowledgeable representative(s) of the farm operator or other entity who can be contacted for further information, or in case of an emergency. The 55 gallon or 500 pound threshold amount shall be based upon the sum of all covered pesticide chemicals normally stored.

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 18, 1988.

TRD-8807362

Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Proposed date of adoption: September 24, 1988

For further information, please call: (512) 463-7583

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Customer Service Protection

###### • 16 TAC §23.45

The Public Utility Commission of Texas proposes an amendment to §23.45, concerning billing, to establish a rate of interest on refunds of overbillings. Comments are solicited on two versions of the proposed amendments. Both versions establish that interest is due on refunds of overbilled amounts. Proposed paragraph (1) would apply as the rate of interest that rate of interest determined by the Public Utility Commission of Texas in accordance with Texas Civil Statutes, Article

1440a, relating to customer deposits. Proposed paragraph (2) would apply as the rate of interest the utility's composite cost of capital as established in its most recent rate proceeding before the Public Utility Commission of Texas.

Martin Wilson, assistant general counsel, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Wilson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section include: full restitution of ratepayers who have paid more than lawfully required; additional incentive to utilities to bill accurately; and additional safeguarding against overearning by utilities.

Comments on the proposal may be submitted to Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with authority to make rules reasonably required in the exercise of its powers and jurisdiction.

###### §23.45. Billing.

(a)-(f) (No change.)

(g) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being purchased by the customer, or if the utility fails to bill the customer for such service, a billing adjustment shall be calculated by the utility.

(1) If the customer is due a refund, the refund [an adjustment] shall be made for the entire period of the overcharges. The utility shall refund all amounts collected in excess of the lawful rates with interest at the rate determined by the commission in accordance with Texas Civil Statutes, Article 1440a. The rate of interest determined by the commission that was in effect at the time the excess amounts were collected shall apply. If no rate of interest was determined by the commission under Texas Civil Statutes, Article 1440a for a period of time during which excess amounts were collected, the rate of interest for that period shall be 6.0% per annum.

(2) If a customer is due a refund, the refund shall be made for the entire period of the overcharge. The utility shall refund all excessive collections with interest at the utility's composite cost of capital as established in the utility's most recent rate proceeding before the commission. Such interest shall be calculated from the date of payment of the amount overbilled.

(3) If the customer was undercharged, the utility may backbill the customer for the amount which was

underbilled. The backbilling is not to exceed six months unless the utility can produce records to identify and justify the additional amount of backbilling or unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §23.47(f) of this title (relating to Meters). However, the utility may not disconnect service if the customer fails to pay charges arising from an underbilling more than six months prior to the date the utility initially notified the customer of the amount of the undercharge and total additional amount due unless such undercharge is a result of meter tampering, bypassing, or diversion by the customer as defined in §23.47(f) of this title (relating to Meters). If the underbilling is \$25 or more, the utility shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(h)-(l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 19, 1988.

TRD-8807417

Phillip A. Holder  
Secretary  
Public Utility Commission  
of Texas

Earliest possible date of adoption: August 26, 1988

For further information, please call: (512) 458-0100

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 53. Regional Education Service Centers

The Texas Education Agency proposes amendments to §§53.2, 53.3, 53.21, 53.24, and 53.25, concerning services provided by education service centers. The sections require the centers to provide services in the core service areas specified in the *State Plan for Regional Education Services Centers*, allow for the establishment of satellite centers for purposes other than media distribution, specify eligibility criteria for membership on regional boards of directors, require a Central Education Agency evaluation of services provided, empower the commissioner of education to impose sanctions in cases where services are inadequate or fail to meet the commissioner's directives, and encourage centers to work closely with institutions of higher education located in their regions. These changes incorporate revisions made by the State Board of Education to the *State Plan for Regional Education Service Centers* in June 1988.

Lynn Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small

Resource ID#: 2799

**Agricultural hazard communication regulations :  
proposed sections**

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