

How a County Can Become Regulated

This document outlines procedures for county officials to follow in order for a county to become regulated, deregulated, or to add special provisions under Chapter 76 of the Texas Agriculture Code, commonly referred to as the Texas Pesticide Law and Section 7.51 of Title 4, Texas Administrative Code, commonly referred to as the Texas Pesticide Regulations.

Instructions for becoming a regulated or deregulated county

When county officials become aware of interest in becoming regulated or deregulated, the county must hold a hearing to determine whether an order should be issued. Commissioners court orders to regulate or exempt a county from regulation that are issued under §76.144 become effective January 1 of the year following the date of the entry of the order. The commissioners court shall publish notice of the hearing at least 10 days before it is to be held in at least one newspaper in the county. TDA officials may be available upon request to attend the county's public hearing to answer questions regarding what the county can and cannot do.

After the hearing, when the court of a newly regulated or deregulated county issues an order, the county must send a copy of the order and a copy of the notice from the newspaper showing the date of publication directly to the Pesticide Programs Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Along with the order, should be a request from the county that TDA add the county or delete the county from the list of regulated counties. We request that this information be sent to the Austin headquarters as soon as possible.

When an order and letter from a newly regulated or deregulated county are received, TDA will send a letter to the county acknowledging receipt of the order. After the order is issued, TDA will file any adopted changes with the **Texas Register**. The requesting county will be notified of the order and will be provided copies of any **Texas Register** filings when published. The county should direct any questions regarding the order to TDA headquarters in Austin.

Instructions for establishing special provisions

Under Section 7.51, regulated counties may establish special provisions to regulate the application of herbicides in that county. These provisions may apply to all or only a portion of the county. For example, if susceptible crops are only grown in a specific portion of the county, that area may become regulated while the remainder of the county is deregulated. Examples of provisions counties may or may not establish are listed under the attached Guideline for County Special Provisions.

When county officials become aware of interest in the adoption of special provisions for a regulated county, the county is encouraged to hold a public hearing to determine whether an order should be issued, and approval must also be obtained by TDA. If the county elects to not hold a public hearing, TDA may hold a public hearing upon receipt of the request. This public hearing may be held any time during the year. The commissioners court shall publish notice of the hearing at least 10 days before it is to be held in at least one newspaper in the county. TDA officials may be available upon request to attend the county's public hearing, to answer questions regarding what the county can and cannot do.

After the hearing, when the court issues its request for special provisions, the county must send a copy of the request and a copy of the notice from the newspaper showing the date of publication directly to the Pesticide Programs Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Along with the request should be a letter from the county that TDA review and approve the special provision(s) sought by the commissioners court. We request that this information be sent to the Austin headquarters as soon as possible.

When a request from a county for special provisions is received, TDA will review the request and decide on its approval. TDA will send a letter to the county acknowledging receipt and whether the request has been approved. After the approval letter is issued, TDA will file any approved changes with the **Texas Register** as proposed changes to the county's regulations or new county regulations. Once the comment period is over, TDA will file the final rule adoption. The requesting county will be notified and provided copies of any **Texas Register** filings when published. The county should direct any questions regarding the order to TDA headquarters in Austin.

Instructions for establishing emergency exemptions

The dates for application of regulated herbicides may be extended for emergency situations upon the written request of the commissioners court of a regulated county and approval by TDA, if it is determined 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. This emergency exemption will be filed by TDA with the **Texas Register** and the requesting county will be provided copies. The county should direct any questions regarding the exemption to TDA headquarters in Austin.

Guidelines for County Special Provisions

This document provides guidelines for special provisions to the Texas Pesticide Regulations.

1. **Spray Permits** - exemptions will not be allowed except during periods when susceptible vegetation is at a minimum (example Oct. 1 through April 1).
2. **Recordkeeping Requirements** - records must be kept even during periods when permits may be exempted.
3. **Proof of Financial Responsibility for Commercial Applicators** - no types of applications or times of the year will exempt commercial applicators from maintaining proof of financial responsibility.
4. **Prohibiting Sale of Certain Herbicides** - the law allows the commissioner's court to request Special Provisions, but does not include authority to prohibit the sale of certain herbicides.
5. **Special Provisions Requiring TDA Personnel to Inspect Areas Prior to Treatments** - special provisions may not require the department to inspect land prior to spray permits being issued.
6. **Regulate or Prohibit Methods of Application** - the department may consider a request to regulate or prohibit methods of application.
7. **Prohibit Application of any Regulated Herbicide During any Period of the Year** - The department may allow the prohibition of certain regulated herbicides which may cause adverse effects to susceptible crops or vegetation during a specific time period.
8. **Exempt Portion of County from Regulations** - The department may allow a portion of the county which may be identified by easily recognizable physical boundaries to be exempt from provisions in 76.141-76.144.