

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 65. COMMERCIAL FERTILIZER RULES

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes to amend TAC Title 4, Part 3, Chapter 65, Subchapter B, §65.13 concerning Waste Products Distributed as Fertilizers as well as TAC Title 4, Part 3, Chapter 65, Subchapter C, §65.24 concerning Warnings or Cautionary Statements Required. The changes are to §65.13 by adding subsection (c) and §65.24 by adding section (4). This prevents application of forever chemicals founds in waste products from permanently contaminating farm ground and water systems in Texas.

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, has assessed that approximately 34 firms may be affected by the updated rules and that approximately 100 tons of waste products sold as fertilizer are used in the state.

Dr. Herrman concludes that for the first five-year period there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Public Benefit Cost Statement

Dr. Herrman has concluded that during the first five years the rule will be in effect the rule will have a positive impact on Small Businesses, Microbusinesses, and Rural Communities by preventing per- and polyfluoroalkyl substances (PFAS) and other adulterants in waste products sold as commercial fertilizer from contaminating agricultural land in rural communities.

Dr. Herrman has concluded that during the first five years the rule will be in effect there will be no effect on local employment, as it does not require the creation of new employee positions or the elimination of existing employee positions.

Dr. Herrman has also determined that the benefit afforded to the public includes avoiding contamination of the environment and life systems in Texas through the use of waste products distributed as fertilizers. The principle thrust of this rule is to avoid contamination by forever chemicals with known deleterious impact to the environment and life systems including, but not limited to, per and polyfluoroalkyl substances. Compliance cost associated with this regulation is estimated at \$50 per ton for analytical testing and risk management associated with preventing adulteration of the environment and harming life systems from adulterated waste products distributed as fertilizers.

Government Growth Impact Statement

During the first five years the rule will be in effect, the proposed rule neither creates nor eliminates a government program; implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency; the proposed rule does not require an increase or decrease in fees paid to the agency; the proposed rule creates a new regulation, prohibiting application of waste products sold as commercial fertilizer containing adulterants; the proposed rule expands an existing regulation; the proposed rule neither increases nor decreases the number of individuals subject to the rule's applicability; and the proposed rule positively affects this state's economy.

Comments on the proposal may be submitted to Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160; by fax at (979) 845-1389; or by e-mail at tjh@otsc.tamu.edu.

SUBCHAPTER B. PERMITTING AND REGISTRATION

4 TAC §65.13

Statutory Authority: The amendment to §65.13 is proposed under the Texas Agriculture Code 63, §63.004 which provides the Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial fertilizers. The amendment also aligns with Texas Agriculture Code 63, §63.001 as it relates to terms and definitions adopted by the Association of American Plant Food Control Officials in its last published official publication.

Cross Reference: The Texas Agriculture Code, Chapter 63, the Texas Commercial Fertilizer Control Act, Subchapter I, §63.143, is affected by the proposed amendment.

§65.13. Waste Products Distributed as Fertilizers.

(a) No person shall sell, offer or expose for sale, or distribute in this state, any industrial or municipal product originally designated as a waste by any governmental agency -- federal, state or local -- intended for, promoted or represented, advertised as or distributed as a fertilizer as defined in the Texas Agriculture Code, Chapter 63, §63.002 prior to registering the same as specified in §63.031.

(b) In addition to other requirements of the Law and the Rules, applications for registration of sewage, sludge, and septage or mixed fertilizer containing same shall be accompanied by the following:

(1) A detailed description of the facilities, equipment and method of manufacture to be used in processing, manufacturing and testing of the product.

(2) A sampling schedule, a full description of all tests made prior to application for registration and the results of such tests which shall include, but not necessarily be limited to, those pollutants and pathogens required to be tested by United States Environmental Protection Agency Code of Federal Regulations, Title 40 CFR: Protection of Environment, Part 503 Standards for the Use or Disposal of Sewage Sludge.

(3) A schedule for periodic testing which initially shall be conducted on each production run no less than once (1) each calendar quarter.

(A) Less frequent testing may be allowed where data show continued uniformity and a consistent margin of compliance.

(B) More frequent testing shall be required where the data show the process is not under control.

(C) Sequential testing shall again be required when periodic analysis or any other information available to the manufacturer indicates that:

(i) changes are made in the manufacturing process;

(ii) new or expanded sources of the raw ingredients are used.

(4) A statement that any product consisting in whole or part of sewage, septage or sludge meets the CFR Part 503 and specifically it meets the requirements of 503.32(a) and one of the vector attraction reduction requirements in 503.33(b)(1) through 503.33(b)(8).

(c) The waste products shall not contain any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2024.

TRD-202403912

Tim Herrman

Texas State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Earliest possible date of adoption: October 6, 2024

For further information, please call: (979) 845-1121



SUBCHAPTER C. LABELING

4 TAC §65.24

Statutory Authority: The amendment to §65.24 is proposed under the Texas Agriculture Code 63, §63.004 which provides the Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial fertilizers. The amendment also aligns with Texas Agriculture Code 63, §63.001 as it relates to terms and definitions adopted by the Association of American Plant Food Control Officials in its last published official publication.

Cross Reference: The Texas Agriculture Code, Chapter 63, the Texas Commercial Fertilizer Control Act, Subchapter I, §63.143, is affected by the proposed amendment.

§65.24. Warnings or Cautionary Statements Required.

A warning or cautionary statement is required on any fertilizer product which:

(1) contains 0.10% or more boron in water soluble form. The statement shall include:

(A) the word "Warning" or "Caution" conspicuously displayed;

(B) the crop(s) for which the fertilizer is recommended; and

(C) that the use of the fertilizer on any crop(s) other than those recommended may result in serious injury to the crop(s);

(2) contains 0.001% or more of molybdenum. The statement shall include:

(A) the word "Warning" or "Caution" conspicuously displayed; and

(B) that the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals;

(3) when applied according to the directions for use adds to the land levels of trace elements exceeding the limits set forth in Table 2, subparagraph (B) of this paragraph.

(A) The statement, conspicuously displayed, shall read "WARNING: Application according to the directions for use EXCEEDS the allowable limits of certain trace elements which can be applied to one acre of land in a calendar year."

(B) Table 2. Cumulative Element Loading Rate When Conforming to §65.17(d)(1).
Figure: 4 TAC §65.24(3)(B) (No change.)

(4) Contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-202403913

Tim Herrman

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 55. RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 55: §§55.1 - 55.6, 55.100 -