



California Environmental Protection Agency

Unified Program Bulletin
0405-02

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TO: All Certified Unified Program Agencies

FROM: Unified Program Section

SUBJECT: Regulation of Agricultural Handlers under the Unified Program

Introduction

Generally, businesses operating as farms or “Agricultural handlers,” are generally subject to the same level of regulation as other businesses that handle hazardous materials and generate hazardous wastes. However, specific and non-specific exemptions from regulation for agricultural handlers are provided in four Unified Program elements: the Hazardous Materials Release Response Plans and Inventories (Business Plan), the California Accidental Release Prevention, the Hazardous Waste Generator, and the Underground Storage Tank programs. Although not a Unified Program element, the California Uniform Fire Code includes exemptions that may apply to agricultural handlers. These exemptions are only provided for those businesses regulated under the specified Unified Program element. An exemption for a regulated business, such as an agricultural handler, provided in one program element does not exempt that business from compliance with the requirements of any of the other Unified Program elements.

Exemptions

The specific exemptions for farms and other applicable exemptions are described below. Appendix A contains additional information that supports each exemption. The appendix includes the applicable text from the Health and Safety Code and the California Code of Regulations that may apply to farms. In some instances, the appendix also includes information related to the process to be used for applying specific exemptions.

Hazardous Materials Release Response Plans and Inventories (HMRRP)

1. The California Health and Safety Code (HSC) Chapter 6.95 clearly identifies agricultural entities as a “business” and “handler” subject to the requirements of the Business Plan Program. These include the requirement to prepare and submit a Business Plan to the local Certified Unified Program Agency (CUPA).

2. Alternative Business Plan submittal requirements are outlined in HSC Section 25505 (e). These allow a business that has established a complete Business Plan to submit only the chemical inventory, a site map, a list of emergency contacts, and a certification of compliance to the CUPA, with concurrence of the local fire chief.
3. HSC, Chapter 6.95 specifically identifies an exemption from annual Business Plan submission for farms in HSC, Section 25503.5 (c) (5). Farmers must still establish and implement a complete Business Plan including an emergency response plan and appropriate training program for employees (HSC Section 25504 (e).) Farmers are exempted from filing the emergency response plans and procedures and training program if very specific conditions are met.
4. Unified Program Agencies have authority to grant exemptions for farms or any other handlers under specific conditions.
5. CUPAs can allow the County Agricultural Commissioner to distribute forms and conduct compliance inspections at agricultural entities. However, the CUPA retains responsibility for the program and must ensure that all program requirements are met. Additionally, a statutory change effective January 1, 2004, requires a written agreement between any Unified Program Agency and any other agency that implements any part of the CUPA program in the jurisdiction.

Hazardous Waste Generator (HWG)

1. There are no exemptions for farming or agricultural activities that generate hazardous waste. A "generator" is any person whose act or process produces hazardous waste or whose act causes a hazardous waste to become subject to regulation. There are two hazardous waste provisions that may impact agricultural handlers:
 - a. Empty pesticide containers (or inner liners) are exempted from hazardous waste requirements if managed in accordance with the requirements found.
 - b. Banned, unregistered or outdated agricultural pesticides may be hazardous waste and, if so, must be regulated as such.

Underground Storage Tanks

The Underground Storage Tank (UST) law exempts from regulation those USTs with a capacity of 1,100 gallons or less, located on a farm, and used to store motor vehicle fuel primarily for agricultural purposes and not for resale. It also exempts from regulation USTs with a capacity of 1,100 gallons or less, located on a farm, and used to store home heating fuel for consumptive use on the premises where stored. The UST law authorizes a local agency to regulate tanks that are not subject to regulation under state or federal law.

California Accidental Release Prevention Program (CalARP)

The CalARP Program provides an exemption for ammonia when held by farmers for use as an agricultural nutrient. There is no other farm or agricultural specific exemptions. (See CCR,

Title 19, Section 2770.4.) Additionally, if a pesticide is used on a farm or nursery and is determined by the AA to pose a regulated substances accident risk the AA must first consult with the county agricultural commissioner or the Department of Food and Agriculture to evaluate whether the existing RMP is adequate in relation to the regulated substances accident risk.

Hazardous Materials Management Plans and Inventory Statements (HMMP/HMIS)

There are no exemptions specifically for agricultural handlers under the California Uniform Fire Code, Article 80. However, there are two provisions that may impact agricultural handlers.

1. The application and release of pesticide products and materials intended for use in weed abatement, erosion control, soil amendment, or similar applications, when applied in accordance with the manufacturer's instructions and label directions, are exempted from regulation under the Fire Code.
2. The local fire authority is not constrained by the threshold quantity reporting requirements of Health and Safety Code, Chapter 6.95, and may require additional inventory information for hazardous materials as an addendum to the Business Plan.

Appendix A

Hazardous Materials Release Response Plans and Inventories (HMRRP)

1. Farms are regulated under the Business Plan Program. An “agricultural handler” is defined as a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity (Health and Safety Code Sections 25501 and 25503.5 (c)(5)). Farmers are employers that store and apply hazardous materials so they meet the criteria for a “business” and “handler” (Section 25501(d) and (n)).
2. Farms may be exempted from specific requirements of the Business Plan Program. The Legislature specifically identified an exemption from filing a business plan, for farms, in HSC, Section 25503.5 (c) (5). Farms must still establish and implement a complete business plan including an emergency response plan and appropriate training program for employees (HSC Section 25504 (e)).

HSC Section 25503.5 (c)(3) The administering agency, upon application by a handler, may exempt the handler, under conditions that the administering agency determines to be proper, from any portion of the business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph.

HSC Section 25503.5 (e) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information in the business plan required by subdivisions (b) and (c) of HSC Section 25504 if all of the following requirements are met:

- (A) The handler annually provides the inventory of information required by Section 25509 to the county agricultural commissioner before January 1 of each year.
- (B) Each building in which hazardous materials subject to this chapter are stored is posted with signs, in accordance with regulations that the office shall adopt, that provide notice of the storage of any of the following:
 - (i) Pesticides.
 - (ii) Petroleum fuels and oil.
 - (iii) Types of fertilizers.
- (C) Each county agricultural commissioner forwards the inventory to the administering agency within 30 days from the date of receipt of the inventory.

HSC Section 25503.5 (d) The administering agency shall provide all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.

HSC Section 25503.5 (e) The administering agency shall adopt procedures to provide for public input when approving any applications submitted pursuant to paragraph (3) or (4) of subdivision (c).

HSC Section 25504 (e) Any business operating a farm exempted by paragraph (5) of subdivision (b) of Section 25503.5 from filing the information specified in subdivisions (b) and (c), shall, notwithstanding this exemption, provide the training programs specified in subdivision (c).

Alternative business plan submittal requirements are found in HSC Section 25505 (e). These allow a business that has established a complete Business Plan to submit only the chemical inventory, a site map, a list of emergency contacts, and a certification of compliance to the CUPA, with concurrence of the local fire chief.

HSC Section 25505 (e) (1) Notwithstanding any other provision of this article, an administering agency may, with the written concurrence of the local fire chief, require a handler to submit only the inventory required by subdivision (a) of Section 25504, a list of emergency contacts, a site plan, and a certification that the handler has prepared a complete business plan that meets the requirements of this article, in lieu of the submission of a business plan, and require the handler to maintain the complete business plan at the site where the inventory is stored.

HSC Section 25505 (e) (2) If an administering agency requires a handler to submit only the inventory, the list of emergency contacts, the site plan, and the certification pursuant to paragraph (1), the administering agency shall review the remaining components of the business plan during its periodic inspections of the handler, and the handler shall annually submit a form, provided by the administering agency, that certifies that the handler has included, and maintains as current, in the business plan, all other information required pursuant to Section 25504. Whenever there is a substantial change in a handler's operations that requires modification of its business plan, the handler shall submit a copy of those changes in accordance with subdivision (b).

HSC Section 25505 (e) (3) If an administering agency requires a handler to submit only the inventory, the list of emergency contacts, the site plan, and the certification pursuant to paragraph (1), the administering agency shall obtain from the handler the other components of the business plan that are not filed with the administering agency upon receipt of a request for public inspection of the business plan. The handler shall submit a complete copy of the business plan to the administering agency within five working days after the administering agency receives a request for public inspection and the administering agency shall make the business plan available to the member of the public requesting the inspection in accordance with the procedures specified in Section 25506. The administering agency shall not charge for a request to obtain this information or for an examination of the business plan during the administering agency's normal working hours.

HSC Section 25505 (e) (4) If, for any reason, a business plan maintained by a handler that is required to only submit the inventory, the list of emergency contacts, the site plan, and the certification pursuant to paragraph (1), is damaged or destroyed, the handler shall replace the business plan within 15 days of its damage or destruction, and shall notify the administering agency of the replacement.

3. Other exemptions apply to farms.

An exemption exists for specified quantities of lubricating oil in Section 25503.5 (b)(1) and unstaffed remote facilities in Section 25503.5 (c) (6). These exemptions may be applicable to farms if they meet the requirements of these sections.

HSC Section 25505 (e) (6) The administering agency shall exempt a business operating an unstaffed remote facility located in an isolated sparsely populated area from the hazardous materials business plan and inventory requirements of this article if the facility is not otherwise subject to the requirements of applicable federal law, and all of the following requirements are met:

- (A) The types and quantities of materials onsite are limited to one or more of the following:
 - (i) Five hundred standard cubic feet of compressed inert gases (asphyxiation and pressure hazards only).
 - (ii) Five hundred gallons of combustible liquid used as a fuel source.
 - (iii) Two hundred gallons of corrosive liquids used as electrolytes in closed containers.
 - (iv) Five hundred gallons of lubricating and hydraulic fluids.
 - (v) Twelve hundred gallons of flammable gas used as a fuel source.
- (B) The facility is secured and not accessible to the public.
- (C) Warning signs are posted and maintained for hazardous materials pursuant to the California Fire Code.
- (D) A one-time notification and inventory is provided to the administering agency along with a processing fee in lieu of the existing fee. The fee shall not exceed the actual cost of processing the notification and inventory, including a verification inspection if necessary.
- (E) If the information contained in the initial notification or inventory changes and the time period of the change is longer than 30 days, the notification or inventory shall be resubmitted within 30 days to the administering agency to reflect the change, along with a processing fee, in lieu of the existing fee, that does not exceed the actual cost of processing the amended notification or inventory, including a verification inspection, if necessary.
- (F) The administering agency shall forward a copy of the notification and inventory to those agencies that share responsibility for emergency response.
- (G) The administering agency may require an unstaffed remote facility to submit a hazardous materials business plan and inventory in accordance with this article if the agency finds that special circumstances exist such that development and maintenance of the business plan and inventory is necessary to protect public health and safety and the environment.

CUPAs also have broad exemption power under Section 25503.5 (c) to exempt: any hazardous substance from the inventory provisions of the Business Plan; any handler from

any portion of the Business Plan; and the reporting of a specific hazardous substance by a specific handler. The CUPA must provide a written finding that the above exemptions would not increase the risk to public health and safety and the environment and hold a public hearing. These exemptions can be applied to farms.

4. Role of the County Agricultural Commissioner in the Business Plan Program.

The County Agricultural Commissioner may receive and forward chemical inventory statements as identified in the farm exemption. The County Agricultural Commissioner may also distribute Business Plan forms (Section 25505.1) and be designated by the CUPA to conduct inspections of agricultural handlers (Section 25508 (b)).

HSC Section 25508 (b) In addition to the requirements of Section 25537, the administering agency shall conduct inspections of every business subject to this article at least once every three years to determine if the business is in compliance with this article. However, the administering agency may designate the county agricultural commissioner to conduct the inspections of agricultural handlers. The administering agency or its designee for agricultural handlers shall give priority, when conducting these inspections, to inspecting facilities which store an amount of acutely hazardous materials, as defined in Section 25532, equal to, or greater than, the amount specified in subdivision (a) of Section 25536. In establishing a schedule for conducting inspections pursuant to this section, the administering agency may adopt and use an index of the volatility, toxicity, and quantity of acutely hazardous materials and hazardous materials. Administering agencies and designees shall attempt to schedule the inspections conducted pursuant to this section and Section 25537, when applicable, during the same time period.

It is important to note that a CUPA maintains responsibility for the implementation of the Business Plan program even if the County Agricultural Commissioner distributes forms or conducts agricultural handler inspections. CUPAs must ensure that the forms are accurate and complete and that inspections are completed, as the program requires.

Hazardous Waste Generator (HWG)

The following Department of Toxic Substances Control Fact Sheets contains additional information relative to Hazardous Waste generation and handling that may be helpful:

"EPA Identification Numbers" (September 2000).

"Accumulating Hazardous Wastes at Generator Sites" Fact Sheet (January 2002).

"Managing Empty Containers" (April 2003).

"Used Oil and Filter Management" (April 2003)

"Management of Spent Lead-Acid Batteries" (June 2001).

Underground Storage Tanks

HSC Section 25281(y) (1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground.

"Underground storage tank" does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.

HSC Section 25299.2 (a) Except as provided in subdivision (a) of Section 25299.4, this chapter does not preclude or deny the right of a local agency to adopt and enforce any regulation, requirement, or standard of performance that is more stringent than a regulation, requirement, or standard of performance in effect under this chapter with respect to underground storage tanks, if the regulation, requirement, or standard of performance, as provided in this subdivision, is consistent with this chapter.

HSC Section 25299.2 (b) This chapter shall not be construed to preclude or deny the right of a local agency to regulate tanks which are not subject to regulation under this chapter or the federal act.

California Accidental Release Prevention Program (CalARP)

HSC, Section 25534(b)(3) If the administering agency determines that an economic poison, as defined in Section 12753 of the Food and Agricultural Code, used on a farm or nursery may pose a regulated substances accident risk pursuant to this article, the administering agency shall first consult with the Department of Food and Agriculture or the county agricultural commissioner to evaluate whether the current RMP is adequate in relation to the regulated substances accident risk. This paragraph does not limit the authority of an administering agency to conduct its duties under this article, or prohibit the exercise of that authority.

HSC, Section 25534(c) The requirements of this section apply to a stationary source that is not otherwise required to submit an RMP pursuant to Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations.

CCR, Title 19, Section 2745.1(g) Submissions. If a pesticide, as defined in Section 12753 of the Food and Agricultural Code, is used on a farm or nursery and is determined by the AA to pose a regulated substances accident risk; the AA shall first consult with the county agricultural commissioner or the Department of Food and Agriculture to evaluate whether the existing RMP is adequate in relation to the regulated substances accident risk. This paragraph does not prohibit, or limit the authority of an AA to conduct its duties.

CCR, Title 19, Section 2770.4 Exemptions. Agricultural nutrients. Ammonia used as an agricultural nutrient, when held by farmers, is exempt from all provisions of this chapter.

CCR, Title 19, Section 2770.4.1 Exclusion. Flammable substances used as fuel or held for sale as fuel at retail facilities. A flammable substance listed in Section 2770.5, Table 2, is nevertheless excluded from all provisions of this chapter when the substance is used as a fuel or held for sale as a fuel at a retail facility.