

OHIO PESTICIDE LAW – OHIO REVIS CODE

“THE LAW”

Chapter 921.

EFFECTIVE SEPTEMBER 1976
AMENDMENTS EFFECTIVE JULY 27, 1990
AMENDMENTS EFFECTIVE JUNE 20, 1994
AMENDMENTS EFFECTIVE JULY 1, 2004
AMENDMENTS EFFECTIVE APRIL 15, 2005



OHIO DEPARTMENT OF AGRICULTURE

DIVISION OF PLANT INDUSTRY

PESTICIDE REGULATION

CHAPTER 921 - effective 7/1/2004 PESTICIDES

921.01	Definitions
921.02	Registration of pesticides; fees
921.021	Renumbered
921.06	Custom applicator license; fees
921.07	Repealed
921.08	Licensing of nonresident applicators and operators
921.09	Licensing of pesticide application businesses; custom applicator for each location; liability of owner or operator
921.10	Evidence of financial responsibility required; lawful use of pesticide does not provide immunity
921.11	Persons who may apply restricted use pesticides; certification of private applicators
921.12	License examination; renewal
921.13	Pesticide dealer license; fees
921.14	Records
921.151	Renumbered
921.16	Rules for enforcement and administration; civil penalties
921.18	Powers of director of agriculture
921.19	Public operator license
921.22	Licensing of nonresident applicators and operators
921.22	Pesticide program fund
921.22	Pesticide program fund
921.23	Disciplinary actions for violations
921.24	Prohibitions
921.25	Civil penalties for violations; injunctions; remedies are cumulative
921.26	Exceptions
921.27	Seizure of illegal pesticides
921.29	State's lien for fines, penalties, costs, damages
921.30	Written notice
921.31	Effect of child support default
921.99	Penalties

§ 921.01. Definitions.

As used in this chapter:

(A) "Active ingredient" means any ingredient that will prevent, destroy, kill, repel, control, or mitigate any pest, or that will act as a plant regulator, defoliant, or desiccant.

(B) "Adulterated" shall apply to any pesticide if its strength or purity is less than or greater than the professed standard or quality as expressed on its labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(C) "Agricultural commodity" means any plant or part thereof or animal or animal product, produced for commercial use by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons, primarily for the sale, consumption, propagation, or other use, by humans or animals.

(D) "Aircraft" means any device used or designed for navigation or flight in the air, except a parachute or other device used primarily as safety equipment.

(E) "Animal" means all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish, and shellfish.

(F) "Authorized diagnostic inspection" means a diagnostic inspection conducted by a commercial applicator in the pesticide-use category in which the commercial applicator is licensed under this chapter.

(G) "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(H) "Brand" means any word, name, symbol, device, or combination thereof, that serves to distinguish the pesticide manufactured or distributed by one person from that manufactured or distributed by any other person.

(I) "Pesticide applicator" means a commercial applicator or a private applicator.

(J) "Private applicator" means an individual who is licensed under section 921.11 of the Revised Code.

(K) "Commercial applicator" means an individual who is licensed under section 921.06 of the Revised Code to apply pesticides or to conduct authorized diagnostic inspections.

(L) "Competent" means properly qualified as evidenced by passing the general examination and each applicable pesticide-use category examination for the pesticide-use categories in which a person applies pesticides and, in the case of a person who is a commercial applicator, conducts diagnostic inspections and by meeting any other criteria established by rule.

(M) "Federal act" means the "Federal Insecticide, Fungicide and Rodenticide Act," 61 Stat. 163 (1947), 7 U.S.C.A. 136, as amended.

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

(O) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(P) "Device" means any instrument or contrivance, other than a firearm, that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than human beings and other than bacteria, virus, or other microorganism on or in living human beings or other living animals. "Device" does not include equipment used for the application of pesticides when sold separately therefrom.

(Q) "Direct supervision" means either of the following, as applicable:

(1) Unless otherwise prescribed by its labeling, a pesticide is considered to be applied under the direct supervision of a commercial applicator, if it is applied by a trained serviceperson acting under the instructions and control of a commercial applicator.

(2) Unless otherwise prescribed by its labeling, a restricted use pesticide is considered to be applied under the direct supervision of a private applicator, if it is applied by an immediate family member or a subordinate employee of that private applicator acting under the instructions and control of the private applicator, who is responsible for the actions of that immediate family member or subordinate employee and who is available when needed, even though the private applicator is not physically present at the time and place the restricted use pesticide application is occurring.

(R) "Directly supervise" means providing direct supervision under division (Q)(1) or (2) or both of those divisions of this section, as applicable.

(S) "Distribute" means to offer or hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, to deliver or offer to deliver, pesticides in this state. "Distribute" does not mean to hold for use, apply, or use pesticides or dilutions of pesticides, except when a pesticide dealer holds for use, applies, or uses pesticides or dilutions of pesticides in the course of business with a commercial applicator who is employed by that pesticide dealer.

(T) "Environment" includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(U) "Fungus" means any nonchlorophyll-bearing thallophyte, which is any nonchlorophyll-bearing plant of a lower order than mosses and liverworts, as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living human beings or other animals, or processed food, beverages, or pharmaceuticals.

(V) "General use pesticide" means a pesticide that is classified for general use under the federal act.

(W) "Ground equipment" means any device, other than aircraft, used on land or water to apply pesticides in any form.

(X) "Immediate family" means a person's spouse residing in the person's household, brothers and sisters of the whole or of the half blood, children, including adopted children, parents, and grandparents.

(Y) "Incidental use" or "incidentally use" means the application of a general use pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm. "Incidental use" or "incidentally use" does not mean regular, routine, or maintenance application of a general use pesticide.

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

(AA) "Ingredient statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of inert ingredients. When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(BB) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, including, but not limited to, beetles, bugs, bees, and flies, and to other allied classes of arthropods, including, but not limited to, spiders, mites, ticks, centipedes, and wood lice.

(CC) "Integrated pest management" means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

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

(EE) "Labeling" means all labels and other written, printed, or graphic matter:

(1) Accompanying the pesticide product or device at any time;

(2) To which reference is made on the label or in literature accompanying the pesticide product or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency, United States department of agriculture or interior, the United States department of health and human services, state experiment stations, state agricultural colleges, or other similar federal or state institutions or official agencies, authorized by law to conduct research in the field of pesticides;

(3) Including all brochures, technical and sales bulletins, and all advertising material. (FF) "Licensure" includes certification as used in the federal act.

(GG) "Misbranded" applies, if the conditions of either division (GG)(1) or (2) of this section are satisfied as follows:

(1) To any pesticide or device, if at least one of the following occurs:

(a) Its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients 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.

(c) Any word, statement, or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(2) To any pesticide, if at least one of the following occurs:

(a) The labeling of a restricted use pesticide does not contain a statement that it is a restricted use pesticide.

(b) The labeling accompanying it does not contain directions for use that are necessary for effecting the purpose for which the pesticide is intended and, if complied with, together with any requirements imposed by the federal act, that are adequate to protect the environment.

(c) The label does not bear all of the following:

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

(ii) An ingredient statement on the part of the immediate container and on the outside container and wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, provided that the ingredient statement may appear prominently on another part of the container as permitted by the amended federal act or by the director;

(iii) A warning or caution statement that may be necessary and that, if complied with together with any requirement imposed under the federal act, would be adequate to protect the environment;

(iv) The net weight or measure of the contents, subject to such reasonable variations as the administrator of the United States environmental protection agency or the director of agriculture may permit;

(v) The name and address of the manufacturer, registrant, or person for whom manufactured;

(vi) The United States environmental protection agency registration number assigned to

each establishment in which the pesticide was produced and the agency registration number assigned to it, as required by regulations under the federal act.

(d) The pesticide contains any substance or substances in quantities highly toxic to human beings unless the label bears, in addition to other label requirements, all of the following:

(i) The skull and crossbones;

(ii) The word "poison" in red prominently displayed on a background of distinctly contrasting color;

(iii) A statement of an antidote or a practical or emergency medical treatment, first aid or otherwise, in case of poisoning by the pesticide.

(e) It is contained in a package or other container or wrapping that does not conform to the standard established by the administrator of the United States environmental protection agency.

(HH) "Nematodes" means invertebrate animals of the phylum nemathelminthes and class nematoda, which are unsegmented, round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and that inhabit soil, water, plants, or plant parts and also may be called nema or eel-worms.

(II) "Pest" means a harmful, destructive, or nuisance insect, fungus, rodent, nematode, bacterium, bird, snail, weed, or parasitic plant or a harmful or destructive form of plant or animal life or virus, or any plant or animal species that the director declares to be a pest, except viruses, bacteria, or other microorganisms on or in living animals, including human beings.

(JJ) "Pesticide" means any substance or mixture of substances intended for either of the following:

(1) Preventing, destroying, repelling, or mitigating any pest;

(2) Use as a plant regulator, defoliant, or desiccant. "Pesticide" includes a pest monitoring system designated by rule.

(KK) "Pesticide dealer" means any person who distributes restricted use pesticides or pesticides whose uses or distribution are further restricted by the director to the ultimate user or to a commercial applicator who is employed by that pesticide dealer.

(LL) "Pesticide business" means a person who performs pesticide business activities.

(MM) "Pesticide business activities" means any of the following:

(1) The application of pesticides to the property of another for hire;

(2) The solicitation to apply pesticides;

(3) The conducting of authorized diagnostic inspections.

(NN) "Pesticide business registered location" means a location at which pesticide business activities are conducted and that is registered through the issuance of a license to a pesticide business under section 921.09 of the Revised Code.

(OO) "Pesticide-use category" means a specialized field of pesticide application or of diagnostic inspection as defined by rule.

(PP) "Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(QQ) "Product name" means a coined or specific designation applied to an individual pesticide of a fixed combination and derivation.

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

(SS) "Restricted use pesticide" means any pesticide or pesticide use classified by the administrator of the United States environmental protection agency for use only by a pesticide applicator or by an individual working under the direct supervision of a certified pesticide applicator.

(TT) "Rule" means a rule adopted under section 921.16 of the Revised Code.

(UU) "Sell or sale" means exchange of ownership or transfer of custody.

(VV) "State restricted use pesticide" means any pesticide or pesticides classified by the director subsequent to a hearing held in accordance with Chapter 119 of the Revised Code for use only by pesticide applicators or individuals working under their direct supervision.

(WW) "Unreasonable adverse effects on the environment" means any unreasonable risk to human beings or the environment taking into account the economic, social, and environmental benefits and costs of the use of any pesticide.

(XX) "Trained serviceperson" means an employee of a pesticide business, other business, agency of the United States government, state agency, or political subdivision who has been trained to apply pesticides while under the direct supervision of a commercial applicator.

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

(ZZ) "Wildlife" means all living things that are neither human, domesticated, or pests, including, but not limited to, mammals, birds, and aquatic life.

(AAA) "Trade secret" and "confidential business information" mean any formula, plan,

pattern, process, tool, mechanism, compound, procedure, production date, or compilation of information that is not patented, that is known only to certain individuals within a commercial concern, and that gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.02 Registration of pesticides; fees.

(A) No person shall distribute a pesticide within this state unless the pesticide is registered with the director of agriculture under this chapter. Registrations shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule. Registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at that plant or warehouse as a constituent part to make a pesticide that is registered under this chapter, or if the pesticide is distributed under the provisions of an experimental use permit issued under section 921.03 of the Revised Code or an experimental use permit issued by the United States environmental protection agency.

(B) The applicant for registration of a pesticide shall file a statement with the director on a form provided by the director, which shall include all of the following:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;

(2) The brand and product name of the pesticide;

(3) Any necessary information required for completion of the department of agriculture's application for registration, including the agency registration number;

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in the federal act.

(C) The director, when the director considers it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide including the active and inert ingredients.

(D) The director may require a full description of the tests made and the results thereof upon which the claims are based for any pesticide. The director shall not consider any data submitted in support of an application, without permission of the applicant, in support of any other application for registration unless the other applicant first has offered to pay reasonable compensation for producing the test data to be relied upon and the data are not protected from disclosure by section 921.04 of the Revised Code. In the case of a renewal of registration, a statement shall be required only with respect to information that is different from that furnished when the pesticide was registered or last registered.

(E) The director may require any other information to be submitted with an application. Any applicant may designate any portion of the required registration information as a trade secret or confidential business information. Upon receipt of any required registration information designated as a trade secret or confidential business information, the director shall consider the designated information as confidential and shall not reveal or cause to be revealed any such designated information without the consent of the applicants, except to persons directly involved in the registration process described in this section or as required by law.

(F) Each applicant shall pay a registration and inspection fee established by rule for each product name and brand registered for the company whose name appears on the label. If an applicant files for a renewal of registration after the deadline established by rule, the applicant shall pay a penalty fee established by rule for each product name and brand registered for the applicant. The penalty fee shall be added to the original fee and paid before the renewal registration is issued. In addition to any other remedy available under this chapter, if a pesticide that is not registered pursuant to this section is distributed within this state, the person required to register the pesticide shall do so and shall pay a penalty fee established by rule for each product name and brand registered for the applicant. The penalty fee shall be added to the original fee and paid before the registration is issued.

(G) Provided that the state is authorized by the administrator of the United States environmental protection agency to register pesticides to meet special local needs, the director shall require the information set forth under divisions (B), (C), (D), and (E) of this section and shall register any such pesticide after determining that all of the following conditions are met::

- (1) Its composition is such as to warrant the proposed claims for it.
- (2) Its labeling and other material required to be submitted comply with the requirements of the federal act and of this chapter, and rules adopted thereunder.
- (3) It will perform its intended function without unreasonable adverse effects on the environment.
- (4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment.
- (5) The classification for general or restricted use is in conformity with the federal act.

The director shall not make any lack of essentiality a criterion for denying the registration of any pesticide. When two pesticides meet the requirements of division (G) of this section, the director shall not register one in preference to the other.

(H) (1) The director may refuse to register a pesticide if the application for registration fails to comply with this section.

(2) The director may suspend or revoke a pesticide registration after a hearing in accordance with Chapter 119. of the Revised Code for a pesticide that fails to meet the claims made for it on its label.

(3) The director may immediately suspend a pesticide registration, prior to a hearing, when the director believes that the pesticide poses an immediate hazard to human or animal health or a hazard to the environment. Not later than fifteen days after suspending the registration, the director shall determine whether the pesticide poses such a hazard. If the director determines that no hazard exists, the director shall lift the suspension of the registration. If the director determines that a hazard exists, the director shall revoke the registration in accordance with Chapter 119. of the Revised Code.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 111 (Eff 7-1-89); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 148 v H 645 (Eff 3-22-2001); 149 v S 217, § 3, eff. 7-1-2004.

[§ 921.02.1] § 921.021. Renumbered.

Amended and renumbered RC§ 921.09 in 149 v S 217. Eff 7-1-04.

§ 921.03. Experimental use permits.

Provided the state is authorized by the administrator of the United States environmental protection agency to issue experimental use permits, the director of agriculture may:

- (A) Issue an experimental use permit to any applicant if he determines that such a permit is necessary in order to accumulate information necessary to register a pesticide;
- (B) Refuse to issue an experimental permit if he determines that the pesticide applications, to be made under the proposed terms and conditions, may cause unreasonable adverse effects on the environment;
- (C) Prescribe terms, conditions, and period of time for the experimental use permit which shall be under the supervision of the director;
- (D) Revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

HISTORY: 136 v H 1015. Eff 9-1-76.

§ 921.04. Trade secrets or commercial or financial information protected.

(A) In submitting data required for product registration under this chapter, the applicant may:

- (1) Clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information;
 - (2) Submit such marked material separately from other material required to be submitted under this chapter.
- (B) Notwithstanding any other provision of this chapter, the director of agriculture shall not make public privileged or confidential information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person, except that, when necessary to carry out the provisions of this chapter, information relating to formulae of products acquired by authorization of this chapter may be revealed to any state or federal

agency consulted.

(C) If the director proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under division (B) of this section, he shall notify the applicant or registrant, in writing, by certified mail. The director shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether such information is subject to protection under division (B) of this section.

HISTORY: 136 v H 1015. Eff 9-1-76.

§ 921.05. Denial, cancellation or suspension of registration. (A) If it appears to the director of agriculture that:

(1) The pesticide does not warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with this chapter or rules adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the director may refuse to register the pesticide. The applicant may request an adjudication hearing as provided for in Chapter 119. of the Revised Code.

(2) A pesticide or its labeling does not comply with this chapter or the rules adopted thereunder, he may cancel the registration of a pesticide after a hearing in accordance with Chapter 119. of the Revised Code.

(B) When the director determines that there is an imminent hazard to the public or environment, he may, on his own order, suspend the registration of a pesticide and thereafter provide for a hearing in compliance with Chapter 119. of the Revised Code.

HISTORY: 136 v H 1015. Eff 9-1-76.

§ 921.06. Commercial applicator license; fees.

(A) (1) No individual shall do any of the following without having a commercial applicator license issued by the director of agriculture:

(a) Apply pesticides for a pesticide business without direct supervision;

(b) Apply pesticides as part of the individual's duties while acting as an employee of the United States government, a state, county, township, or municipal corporation, or a park district, port authority, or sanitary district created under Chapter 1545., 4582., or 6115. of the Revised Code, respectively;

(c) Apply restricted use pesticides. Division (A)(1)(c) of this section does not apply to a private applicator or an immediate family member or a subordinate employee of a private applicator who is acting under the direct supervision of that private applicator.

(d) If the individual is the owner of a business other than a pesticide business or an employee of such an owner, apply pesticides at any of the following publicly accessible sites that are located on the property:

(i) Food service operations that are licensed under Chapter 3717. of the Revised Code;

(ii) Retail food establishments that are licensed under Chapter 3717. of the Revised Code;

(iii) Golf courses;

(iv) Rental properties of more than four apartment units at one location;

(v) Hospitals or medical facilities as defined in section 3701.01 of the Revised Code;

(vi) Child day-care centers or school child day-care centers as defined in section 5104.01 of the Revised Code;

(vii) Facilities owned or operated by a school district established under Chapter 3311. of the Revised Code, including an education service center, a community school established under Chapter 3314. of the Revised Code, or a chartered or nonchartered nonpublic school that meets minimum standards set by the state board of education;

(viii) Colleges as defined in section 3365.01 of the Revised Code;

(ix) Food processing establishments as defined in section 3715.021 of the Revised Code;

(x) Any other site designated by rule.

(e) Conduct authorized diagnostic inspections.

(2) Divisions (A)(1)(a) to (d) of this section do not apply to an individual who is acting as a trained serviceperson under the direct supervision of a commercial applicator.

(3) Licenses shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule. The fee for each such license shall be established by rule. If a license is not issued or renewed, the application fee shall be retained by the state as payment for the reasonable expense of processing the application. The director shall by rule classify by pesticide-use category licenses to be issued under this section. A single license may include more than one pesticide-use category. No individual shall be required to pay an additional license fee if the individual is licensed for more than one category.

The fee for each license or renewal does not apply to an applicant who is an employee of

the department of agriculture whose job duties require licensure as a commercial applicator as a condition of employment.

(B) Application for a commercial applicator license shall be made on a form prescribed by the director. Each application for a license shall state the pesticide-use category or categories for which the applicant is applying and other information that the director determines essential to the administration of this chapter.

(C) If the director finds that the applicant is competent to apply pesticides, and conduct diagnostic inspections and that the applicant has passed both the general examination and each applicable pesticide-use category examination as required under division (A) of section 921.12 of the Revised Code, the director shall issue a commercial applicator license limited to the pesticide-use category or categories for which the applicant is found to be competent. If the director rejects an application, the director may explain why the application was rejected, describe the additional requirements necessary for the applicant to obtain a license, and return the application. The applicant may resubmit the application without payment of any additional fee.

(D) (1) A person who is a commercial applicator shall be deemed to hold a private applicator's license for purposes of applying pesticides on agricultural commodities that are produced by the commercial applicator.

(2) A commercial applicator shall apply pesticides only in the pesticide-use category or categories in which the applicator is licensed under this chapter.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 111 (Eff 7-1-89); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 148 v H 645 (Eff 3-22-2001); 149 v S 217, § 3, eff. 7-1-2004; Sub SB 202, (Eff 4-15-2005.)

§ 921.07. Repealed.

Repealed, 136 v H 1015 (Eff 9-1-76); 143 v H 111 (Eff 7-1-89); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 148 v H 645 (Eff 3-22-2001); 149 v S 217, § 3, eff. 7-1-2004;

§ 921.08. Licensing of nonresident applicators.

Nonresident commercial applicators, and nonresident private applicators who are licensed in another state having a state plan approved by the United States environmental protection agency to operate in certain pesticide-use categories may be issued a license by the director of agriculture covering the same categories in this state without a pesticide-use category examination. However, such nonresidents may be required to demonstrate their knowledge of this chapter and rules adopted under it by submitting themselves to an examination covering this chapter and those rules. Licenses issued pursuant to this section may be suspended or revoked in the same manner as other licenses issued pursuant to this chapter, or upon suspension or revocation of the license of another state or the federal government supporting the issuance of a license issued under this section.

HISTORY: 136 v H 1015. Eff 9-1-76; 149 v S 217, § 3, eff. 7-1-04. §

§ 921.09. Licensing of pesticide application businesses; commercial applicator for each location; liability of owner or operator.

(A) (1) No person shall own or operate a pesticide business without obtaining a license from the director of agriculture. Licenses shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule.

(2) A person applying for a pesticide business license shall register each location that is owned by the person and used for the purpose of engaging in the pesticide business.

(B) Any person who owns or operates a pesticide business outside of this state, but engages in the business of applying pesticides to properties of another for hire in this state, shall obtain a license for the person's principal out-of-state location from the director. In addition, the person shall register each location that is owned by the person in this state and used for the purpose of engaging in the pesticide business.

(C) (1) The person applying for a pesticide business license shall file a statement with the director, on a form provided by the director, that shall include any of the following:

(a) The address of the principal place of business of the pesticide business;

(b) The address of each location that the person intends to register under division (A)(2) or (B) of this section;

(c) Any other information that the director determines necessary and that the director requires by rule.

(2) Each applicant shall pay a license fee established by rule for the pesticide business plus an additional fee established by rule for each pesticide business registered location specified in the application. The license may be renewed upon payment of a renewal fee established by rule plus an additional fee established by rule for each pesticide business registered location. A copy of the license shall be maintained and conspicuously displayed at each such location.

(3) The issuance of a pesticide business license constitutes registration of any pesticide business location identified in the application under division (C)(1) of this section.

(4) The owner or operator of a pesticide business shall notify the director not later than fifteen days after any change occurs in the information required under division (C)(1)(a) or (b) of this section.

(D) The owner or operator of a pesticide business shall employ at least one commercial applicator for each pesticide business registered location the owner or operator owns or operates.

(E) The owner or operator of a pesticide business is responsible for the acts of each employee in the handling, application, and use of pesticides and in the conducting of diagnostic inspections. The pesticide business license is subject to denial, modification, suspension, or revocation after a hearing for any violation of this chapter or any rule adopted or order issued under it. The director may levy against the owner or operator any civil penalties authorized by division (B) of section 921.16 of the Revised Code for any violation of this chapter or any rule adopted or order issued under it that is committed by the owner or operator or by the owner's or operator's officer, employee, or agent.

(F) The director may modify a license issued under this section by one of the following methods:

(1) Revoking a licensee's authority to operate out of a particular pesticide business registered location listed under division (C)(1)(b) of this section;

(2) Preventing a licensee from operating within a specific pesticide-use category.

(G) The director may deny a pesticide business license to any person whose pesticide business license has been revoked within the previous thirty-six months.

(H) Each pesticide business registered location that is owned by a pesticide business is subject to inspection by the director.

HISTORY: 145 v S 134 (Eff 6-20-94); 148 v H 645 (Eff 3-22-2001); 149 v S 217, § 1 (Eff 3-31-2003); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.10. Evidence of financial responsibility required; lawful use of pesticide does not provide immunity.

(A) The director of agriculture shall not issue a pesticide business license until the applicant has submitted to the director an effective liability insurance policy or such other evidence of financial responsibility as the director determines necessary. The director shall establish by rule, in accordance with Chapter 119. of the Revised Code, the amount and condition of such liability insurance or other evidence of financial responsibility required. Such requirements shall be based upon the pesticide-use categories in which commercial applicators are licensed to apply pesticides for the pesticide business.

(B) Should the evidence of financial responsibility furnished become unsatisfactory, the pesticide business shall upon notice immediately execute evidence of financial responsibility meeting the requirements of this section or applicable rules, and should the pesticide business fail to do so, the director shall suspend the pesticide business's license and give the business notice of such suspension.

(C) The licensee to whom a suspension order is issued shall be afforded a hearing in accordance with Chapter 119. of the Revised Code, after which the director shall reinstate or revoke the suspended license.

(D) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules.

HISTORY: 136 v H 1015 (Eff 9-1-76); 148 v H 645 (Eff 3-22-2001); 149 v H 217, § 3, eff. 7-1-2004.

§ 921.11. Persons who may apply restricted use pesticides; certification of private applicators.

(A) (1) No individual shall apply restricted use pesticides unless the individual is one of the following: (a) Licensed under section 921.06 of the Revised Code;

(b) Licensed under division (B) of this section;

(c) A trained serviceperson who is acting under the direct supervision of a commercial applicator;

(d) An immediate family member or a subordinate employee of a private applicator who is acting under the direct supervision of that private applicator.

(2) No individual shall directly supervise the application of a "restricted use pesticide" unless the individual is one of the following:

(a) Licensed under section 921.06 of the Revised Code;

(b) Licensed under division (B) of this section.

(B) The director of agriculture shall adopt rules to establish standards and procedures for the licensure of private applicators. An individual shall apply for a private applicator license to the director, on forms prescribed by the director. The individual shall include in the application the pesticide-use category or categories of the license for which the individual is applying and any other information that the director determines is essential to the administration of this chapter. The fee for each license shall be established by rule. Licenses shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule. If a license is not issued or renewed, the state shall retain any fee submitted as payment for reasonable expenses of processing the application.

(C) An individual who is licensed under this section shall use or directly supervise the use of a restricted use pesticide only for the purpose of producing agricultural commodities on property that is owned or rented by the individual or the individual's employer.

HISTORY: 136 v H 1015 (Eff 9-1-76); 138 v H 736 (Eff 10-16-80); 143 v H 111 (Eff 7-1-89); 145 v S 134 (Eff 6-20-94); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.12. License examination; renewal.

(A) The director of agriculture shall require each applicant for a license under section 921.06 or 921.11 of the Revised Code to be examined on the applicant's knowledge and competency in each of the following:

(1) This chapter and rules adopted under it;

(2) The proper use, handling, and application of pesticides and, if the applicant is applying for a license under section 921.06 of the Revised Code, in the conducting of diagnostic inspections in the pesticide-use categories for which the applicant has applied.

(B) Each application for renewal of a license provided for in section 921.06 of the Revised Code shall be filed prior to the deadline established by rule. If filed after the deadline, a penalty of fifty per cent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued. However, if a license issued under section 921.06 of the Revised Code is not renewed within one year of the date of expiration, the licensee shall be required to take another examination on this chapter and rules adopted under it and on the proper use, handling, and application of pesticides and the proper conducting of diagnostic inspections in the pesticide-use categories for which the licensee has been licensed.

(C) A person who fails to pass an examination under division (A) or **(B)** of this section is not entitled to an adjudication under Chapter 119. of the Revised Code for that failure.

(D) The holder of a commercial applicator license may renew the license within one year of the date of expiration without re-examination unless the director determines that a new examination is necessary to insure that the holder continues to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(E) The director shall determine when re-examination for the renewal of licenses for private applicators is required to insure that private applicators continue to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(F) Instead of requiring a commercial applicator or private applicator to complete re-examination successfully under division (D) or (E) of this section, the director may require, in accordance with criteria established by rule, the commercial applicator or private applicator to participate in training programs that are designed to foster knowledge of new technology and to ensure a continuing level of competence and ability to use pesticides safely and properly. The director or the director's representative may provide the training or may authorize a third party to do so. In order for such authorization to occur, the third party and its training program shall comply with standards and requirements established by rule.

HISTORY: 136 v H 1015 (Eff 9-1-76); 148 v H 645 (Eff 3-22-2001); 149 v S 217, § 3, eff. 7-1-2004. §

§ 921.13. Pesticide dealer license; fees.

(A) Any person who is acting in the capacity of a pesticide dealer or who advertises or assumes to act as a pesticide dealer at any time shall obtain a pesticide dealer license from the director of agriculture. Licenses shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule. A license is required for each location or outlet within this state from which the person distributes pesticides.

Any pesticide dealer who has no pesticide dealer outlets in this state and who distributes restricted use pesticides directly into this state shall obtain a pesticide dealer license from the director for the pesticide dealer's principal out-of-state location or outlet and for each sales person operating in the state.

The applicant shall include a license fee established by rule with the application for a license. The application shall be made on a form prescribed by the director.

Each pesticide dealer shall submit records to the director of all of the restricted use pesticides the pesticide dealer has distributed, as specified by the director, and duplicate records shall be retained by the pesticide dealer for a period of time established by rules.

(B) This section does not apply to any federal, state, county, or municipal agency that provides pesticides for its own programs.

(C) Each licensed pesticide dealer is responsible for the acts of each employee in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The pesticide dealer's license is subject to denial, suspension, or revocation after a hearing for any violation of this chapter whether committed by the pesticide dealer or by the pesticide dealer's officer, agent, or employee.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 111 (Eff 7-1-89); 145 v S 134 (Eff 6-20-94); 148 v H 645 (Eff 3-22-2001); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.14. Records.

(A) Each commercial applicator shall keep a record of both of the following:

(1) All diagnostic inspections conducted to determine infestations of pests as required by rules adopted under division (C) of section 921.16 of the Revised Code;

(2) All pesticide applications made by the applicator and by any trained serviceperson acting under the applicator's direct supervision as required by rules adopted under division (C) of section 921.16 of the Revised Code.

Each commercial applicator shall submit copies of the records required under division (A) of this section to the pesticide business, other business, state agency, or political subdivision that employs the commercial applicator.

(B) Each pesticide business, other business, state agency, or political subdivision that receives copies of records under division (A) of this section shall retain them for a period of time established by rule.

(C) Each private applicator shall keep a record of all restricted use pesticide applications made by the applicator or under the applicator's direct supervision as required by rules adopted under division (C) of section 921.16 of the Revised Code. In addition, each private applicator shall maintain the record for a period of three years from the date of the restricted use pesticide application to which that record refers or for any longer period that the director of agriculture determines necessary.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.15. Pesticides having adverse effects on environment prohibited.

No person shall transport, store, dispose of, display, or distribute any pesticide or pesticide container in such a manner as to have unreasonable adverse effects on the environment. The director of agriculture may adopt and enforce rules in accordance with this section and Chapter 119. of the Revised Code governing the disposal and storage of such pesticide or pesticide containers. Such rules shall be in conformity with the guidelines and rules established by the Ohio environmental protection agency.

HISTORY: 136 v H 1015. Eff 9-1-76.

[921.15.1] 921.151. Renumbered.

Amended and renumbered, 143 v H 111 (Eff 7-1-89); 143 v H 571. Eff 7-27-90; 150 v H 95, § 1, eff. 6-26-03; 149 v S 217, § 3, eff. 7-1-2004.

§ 921.16. Rules for enforcement and administration; civil penalties.

(A) The director of agriculture shall adopt rules the director determines necessary for the effective enforcement and administration of this chapter. The rules may relate to, but are not limited to, the time, place, manner, and methods of application, materials, and amounts and concentrations of application of pesticides, may restrict or prohibit the use of pesticides in designated areas during specified periods of time, and shall encompass all reasonable factors that the director determines necessary to minimize or prevent damage to the environment. In addition, the rules shall establish the fees, deadlines, and time periods for registration, registration renewal, late registration renewal, and failure to register under section 921.02 of the Revised Code and the fees, deadlines, and time periods for licensure and license renewal under sections 921.06, 921.09, 921.11, and 921.13 of the Revised Code. The aggregate amount of the fees that initially are established by rule after the effective date of this amendment shall be designed to cover, but not exceed, the costs incurred by the department of agriculture in administering this chapter. Thereafter, the fees shall not be increased without the approval of the general assembly.

(B) The director shall adopt rules that establish a schedule of civil penalties for violations this chapter, or any rule or order adopted or issued under it, provided that the civil penalty for a first violation shall not exceed five thousand dollars and the civil penalty for each subsequent violation shall not exceed ten thousand dollars. In determining the amount of a civil penalty for a violation, the director shall consider factors relevant to the severity of the violation, including past violations and the amount of actual or potential damage to the environment or to human beings.

(C) The director shall adopt rules that set forth the conditions under which the director:

(1) Requires that notice or posting be given of a proposed application of a pesticide;

(2) Requires inspection, condemnation, or repair of equipment used to apply a pesticide;

(3) Will suspend, revoke, or refuse to issue any pesticide registration for a violation of this chapter;

(4) Requires safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(5) Ensures the protection of the health and safety of agricultural workers storing, handling, or applying pesticides, and all residents of agricultural labor camps, as that term is defined in section 3733.41 of the Revised Code., who are living or working in the vicinity of pesticide-treated areas;

(6) Requires a record to be kept of all pesticide applications made by each commercial applicator and by any trained serviceperson acting under the commercial applicator's direct supervision and of all restricted use pesticide applications made by each private applicator and by any immediate family member or subordinate employee of that private applicator who is acting under the private applicator's direct supervision as required under section 921.14 of the Revised Code;

(7) Determines the pesticide-use categories of diagnostic inspections that must be conducted by a commercial applicator;

(8) Requires a record to be kept of all diagnostic inspections conducted by each commercial applicator and by any trained service person.

(D) The director shall prescribe standards for the licensure of applicators of pesticides consistent with those prescribed by the federal act and the regulations adopted under it or prescribe standards that are more restrictive than those prescribed by the federal act and the regulations adopted under it. The standards may relate to the use of a pesticide or to an individual's pesticide-use category.

The director shall take into consideration standards of the United States environmental protection agency.

(E) The director may adopt rules setting forth the conditions under which the director will: (1) Collect and examine samples of pesticides or devices;

(2) Specify classes of devices that shall be subject to this chapter;

(3) Prescribe other necessary registration information.

(F) The director may adopt rules that do either or both of the following:

(1) Designate, in addition to those restricted uses so classified by the administrator of the United States environmental protection agency, restricted uses of pesticides for the state or for designated areas within the state and, if the director considers it necessary, to further restrict such use;

(2) Define what constitutes "acting under the instructions and control of a commercial applicator" as used in the definition of "direct supervision" in division (Q)(l) of section 921.01 of the Revised Code. In adopting a rule under division (F)(2) of this section, the director shall consider the factors associated with the use of pesticide in the various pesticide-use categories. Based on consideration of the factors, the director may define "acting under the instructions and control of a commercial applicator" to include communications between a commercial applicator and a trained serviceperson that are conducted via landline telephone or a means of wireless communication. Any rules adopted under division (F)(2) of this section shall be drafted in consultation with representatives of the pesticide industry.

(G) Except as provided in division (D) of this section, the director shall not adopt any rule under this chapter that is inconsistent with the requirements of the federal act and regulations adopted thereunder.

(H) The director, after notice and opportunity for hearing, may declare as a pest any form of plant or animal life, other than human beings and other than bacteria, viruses, and other microorganisms on or in living human beings or other living animals, that is injurious to health or the environment.

(I) The director may make reports to the United States environmental protection agency, in the form and containing the information the agency may require.

(J) The director shall adopt rules for the application, use, storage, and disposal of pesticides if, in the director's judgment, existing programs of the United States environmental protection agency necessitate such rules or pesticide labels do not sufficiently address issues or situations identified by the department of agriculture or interested state agencies.

(K) The director shall adopt rules establishing all of the following:

(1) Standards, requirements, and procedures for the examination and re-examination of commercial applicators and private applicators;

(2) With respect to training programs that the director may require commercial applicators and

private applicators to complete:

(a) Standards and requirements that a training program must satisfy in order to be offered by the director or the director's representative or in order to be approved by the director if a third party wishes to offer it;

(b) Eligibility standards and requirements that must be satisfied by third parties who wish to provide the training programs;

(c) Procedures that third parties must follow in order to submit a proposed training program to the director for approval;

(d) Criteria that the director must consider when determining whether to authorize a commercial applicator or private applicator to participate in a training program instead of being required to pass a re-examination.

(3) Training requirements for a trained serviceperson.

(L) The director shall adopt all rules under this chapter in accordance with Chapter 119 of the Revised Code.

HISTORY: 136 v H 1015 (Eff 9-1-76); 140 v S 244 (Eff 3-20-84); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 148 v H 645 (Eff 3-22-2001); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.17. Director may delegate authority.

All authority vested in the director of agriculture by virtue of sections 921.01 to 921.29 of the Revised Code may with like force and effect be executed by such employees of the department of agriculture as the director may designate for said purpose.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571. Eff 7-27-90.

§ 921.18. Powers of director of agriculture.

(A) The director of agriculture may:

(1) In order to determine compliance with this chapter and rules adopted under it, enter any public or private premises or transport vehicles during regular business hours to do any or all of the following:

(a) Inspect and copy books, pesticide application records, contracts related to pesticide business activities, and financial responsibility documents;

(b) Inspect the storage or disposal of pesticides;

(c) Inspect and sample pesticides in storage or in use;

- (d) Inspect equipment or devices used to apply pesticides;
- (e) Inspect storage facilities and sites;

(f) Inspect production areas of persons that manufacture pesticides for commercial purposes.

(2) Enter upon any public or private premises at any time, when or where pesticides are being applied to determine if the applicator is or should be licensed or if proper notice has been given before pesticide application, and to collect samples of pesticides being applied or available for use;

(3) Enter upon any public or private premises at reasonable hours to inspect any property thereon or to collect samples of vegetation or animal life, water, soil, or other matter, in order to determine residue levels, efficacy of application, or adverse effects of application, drift, or spillage;

(4) Should the director be denied access to any premises where such access is sought for the purposes set forth in this section, apply to any court of competent jurisdiction for a search warrant authorizing access to such land for those purposes. The court may, upon such application, issue the search warrant for the purposes requested.

(B) When the director or the director's authorized agent observes, or has reasonable cause to believe that a piece of equipment used by a commercial applicator, a private applicator, or any other individual requires calibration, adjustment, or repair to enable it to perform satisfactorily, the director may require such adjustment to be made immediately or issue a "stop operation" order pending repair to the equipment and the director may require a demonstration of it before cancellation or withdrawal of the stop operation order.

(C) The director or the director's authorized agent may:

(1) Issue an order to the owner or custodian of any lot of pesticide or a device requiring it to be held at a designated place when the director or the director's authorized agent has reasonable cause to believe that the pesticide or device has been distributed, stored, transported, or used in violation of this chapter, or any rule adopted thereunder. The pesticide or device shall be held until a release in writing is issued by the director, the director's authorized agent, or a court order. No release shall be issued until this chapter and the rules adopted thereunder are complied with.

(2) If the owner or custodian is not available for service of the order upon the owner or custodian, attach the order to the pesticide or device and notify the owner or custodian, and the registrant.

(D) (1) The director shall establish standards governing the development and implementation of integrated pest management practices that are designed to prevent unreasonable adverse effects on human health and the environment.

(2) The director may enter into cooperative agreements with other state agencies for the implementation of voluntary or mandatory integrated pest management practices.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571 (Eff 7-27-90); 149 v S 217, § 3, eff. 7-1-2004.
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§ 921.19. Public entities subject to law.

Every state agency, municipal corporation, and other governmental agency and political subdivision is subject to this chapter and the rules adopted thereunder with respect to the application, handling, and use of pesticides.

Each state agency, municipal corporation, and other governmental agency and political subdivision is responsible for the acts of each of its employees in the application, handling, and use of pesticides.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 111 (Eff 7-1-89); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 148 v H 645 (Eff 3-22-2001); 149 S 217, § 3, eff. 7-1-2004.

§ 921.22. Pesticide program fund.

The pesticide program fund is hereby created in the state treasury. The portion of the money in the fund that is collected under this chapter shall be used to carry out the purposes of this chapter. The portion of the money in the fund that is collected under section 927.53 of the Revised Code shall be used to carry out the purposes specified in that section, the portion of the money in the fund that is collected under section 927.69 of the Revised Code shall be used to carry out the purposes specified in that section, and the portion of the money in the fund that is collected under section 927.701 of the Revised Code shall be used to carry out the purposes of that section. The fund shall consist of fees collected under sections 921.01 to 921.15, division (F) of section 927.53, and section 927.69 of the Revised Code, money collected under section 927.701 of the Revised Code, and all fines, penalties, costs, and damages, except court costs, that are collected by either the director of agriculture or the attorney general in consequence of any violation of sections 921.01 to 921.29 of the Revised Code. Not later than the thirtieth day of June of each year, the director of budget and management shall determine whether the amount credited to the pesticide program fund under this chapter is in excess of the amount necessary to meet the expenses of the director of agriculture in administering this chapter and shall transfer any such excess from the pesticide program fund to the general revenue fund.

HISTORY: 143 v H 111 (Eff 7-1-89); 143 v H 571. Eff 7-27-90; 150 v H 95, § 1, eff. 7-1-04.

§ 921.23. Disciplinary actions for violations.

The director of agriculture may suspend, prior to a hearing, for not longer than ten days, and, after opportunity for hearing may deny, suspend, revoke, refuse to renew, or modify any provision of any license, permit, or registration issued pursuant to this chapter if the director finds that the applicant or the holder of a license, permit, or registration is no longer qualified,

has violated any provision of this chapter or rules adopted under it, has been found guilty of violating the federal act, or has been convicted of a misdemeanor involving moral turpitude or of a felony.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571 (Eff 7-27-90); 149 v S 217, § 3, eff. 7-1-2004., Sub SB 202,(Eff 4-15-2005).

§ 921.24. Prohibitions.

No person shall do any of the following:

(A) Apply, use, directly supervise such application or use, or recommend a pesticide for use inconsistent with the pesticide's labeling, treatment standards, or other restrictions imposed by the director of agriculture;

(B) Act as a commercial applicator without being licensed to do so;

(C) Use any restricted use pesticide, unless the person is licensed to do so is a trained serviceperson acting under the direct supervision of a commercial applicator, or is an immediate family member or a subordinate employee of a private applicator under the direct supervision of that private applicator;

(D) Refuse or fail to keep or maintain records required by the director in rules adopted under this chapter, or to make reports when and as required by the director in rules adopted under this chapter;

(E) Falsely or fraudulently represent the effect of pesticides or methods to be utilized; (F) Apply known ineffective or improper materials;

(G) Operate in a negligent manner, which includes the operation of faulty or unsafe equipment;

(H) Impersonate any federal, state, county, or municipal official;

(I) Make false or fraudulent records, invoices, or reports;

(J) Fail to provide training to trained servicepersons in the application of pesticides;

(K) Fail to provide direct supervision as specified in rules adopted under division (C) of section 921.16 of the Revised Code;

(L) Distribute a misbranded or adulterated pesticide;

(M) Use fraud or misrepresentation in making application for a license or registration or renewal of a license or registration;

(N) Refuse, fail, or neglect to comply with any limitation or restriction of a license or registration issued under this chapter or rules adopted thereunder;

(O) Aid or abet a licensee or another person in violating this chapter or rules adopted thereunder;

(P) Make a false or misleading statement in an inspection concerning any infestation of pests or the use of pesticides;

(Q) Refuse or fail to comply with this chapter, the rules adopted thereunder, or any lawful order of the director;

(R) Distribute restricted use pesticides to the ultimate user without a pesticide dealer's license;

(S) Except as provided in division (F) of section 921.26 of the Revised Code, distribute restricted use pesticides to an ultimate user who is not licensed under section 921.06, 921.08, or 921.11 of the Revised Code and rules adopted under this chapter;

(T) Use any pesticide that is under an experimental use permit contrary to the provisions of the permit;

(U) Engage in fraudulent business practices;

(V) Dispose of any pesticide product or container in such a manner as to have unreasonable adverse effects on the environment;

(W) Display any pesticide in any manner to produce unreasonable adverse effects on the environment, or to contaminate adjacent food, feed, or other products;

(X) Apply any pesticide by aircraft without being licensed as a commercial applicator;

(Y) Distribute a pesticide that is not registered with the director;

(Z) Fail to properly supervise a trained serviceperson.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.25. Civil penalties for violations; injunctions; remedies are cumulative.

(A) (1) Whenever the director of agriculture has cause to believe that any person has violated, or is violating, this chapter or any rule or order adopted or issued under it, the director may conduct a hearing in accordance with Chapter 119. of the Revised Code to determine whether a violation has occurred. Except as otherwise provided in division (A)(3) of this section, the director shall assess a civil penalty against any person who violates this chapter or any rule or order adopted or issued under it in accordance with the schedule of civil penalties established in rules adopted under division (B) of section 921.16 of the Revised Code. Each day a violation continues constitutes a separate and distinct violation.

(2) In addition to assessing a civil penalty under division (A)(1) of this section, the director may deny, modify, suspend, revoke, or refuse to renew a license, permit, or registration issued

under this chapter.

(3) The civil penalty authorized under division (A)(1) of this section may be assessed against the employer of a person who violates this chapter or any rule adopted or order issued under it rather than against the person.

Divisions (A)(1), (2), and (3) of this section do not affect, and shall not be construed as affecting, any other civil or criminal liability of the employee or the employer that may arise in consequence of the employer's or the employee's violation of this chapter or any other law.

(4) If the person or employer does not pay a civil penalty within a reasonable time after its assessment, the attorney general, upon the request of the director, shall bring a civil action to recover the amount of the penalty.

(B) (1) In lieu of conducting a hearing under division (A) of this section, the director may refer the violation to the attorney general who, except as otherwise provided in division (B)(2) of this section, may bring a civil action against any employer of a person who violates this chapter or any rule or order adopted or issued under it. If the court determines that a violation has occurred, the court shall order the person to pay a civil penalty for each violation, not to exceed five thousand dollars for a first violation and not to exceed ten thousand dollars for each subsequent violation. Each day a violation continues constitutes a separate and distinct violation.

(2) The civil action authorized under division (B)(1) of this section may be brought against the employer of a person who violates this chapter or any rule adopted or order issued under it rather than against the person.

Divisions (B)(1) and (2) of this section do not affect, and shall not be construed as affecting, any other civil or criminal liability of the employee or the employer that may arise in consequence of the employer's or employee's violation of this chapter or any other law.

(C) In addition to the remedies provided and irrespective of whether or not there exists an adequate remedy at law, the director may apply to the court of common pleas for a temporary or permanent injunction or other appropriate relief against continued violation of this chapter.

(D) The remedies available to the director and to the attorney general under this chapter are cumulative and concurrent, and the exercise of one remedy by either the director or the attorney general, or by both, does not preclude or require the exercise of any other remedy by the director, the attorney general, or a prosecutor as defined in section 2935.01 of the Revised Code, except that no person shall pay both a civil penalty under division (A) of this section and a civil penalty under division (B) of this section for the same violation.

(E) If a person violates this chapter or rules adopted under it, both of the following apply:

(1) The person is liable for the violation.

(2) The employer of the person is liable for and may be convicted of the violation if the

person was acting on behalf of the employer and was acting within the scope of the person's employment.

HISTORY: 136 v H 1015 (Eff 9-1-76); 137 v H 219 (Eff 11-1-77); 143 v H 571 (Eff 7-27-90); 149 v S 217, § 3, 7-1-2004.

§ 921.26. Exceptions.

(A) The penalties provided for violations of this chapter do not apply to any of the following:

(1) Any carrier while lawfully engaged in transporting a pesticide or device within this state, if the carrier, upon request, permits the director of agriculture to copy all records showing the transactions in the movement of the pesticides or devices;

(2) Public officials of this state and the federal government, other than commercial applicators employed by the federal government, the state, or a political subdivision, while engaged in the performance of their official duties in administering state or federal pesticide laws or rules, or while engaged in pesticide research;

(3) The manufacturer or shipper of a pesticide for experimental use only by or under supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides, provided that the manufacturer or shipper is not required to obtain an experimental use permit from the United States environmental protection agency;

(4) The manufacturer or shipper of a substance being tested in which its purpose only is to determine its value for pesticide purposes or to determine its toxicity or other properties, and from which the user does not expect to receive any benefit in pest control from its use;

(5) Persons conducting laboratory research involving pesticides;

(6) Persons who incidentally use pesticides. The incidental use shall involve only the application of general use pesticides. If a person incidentally uses a pesticide, the pesticide shall be applied in strict accordance with the manufacturer's label for general use purposes. If further applications are necessary following the incidental use application, a pesticide applicator shall apply the pesticide.

(B) No pesticide or device shall be considered in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If the pesticide or device is not so exported, this chapter applies.

(C) No person who is licensed, regulated, or registered under section 921.02, 921.03, 921.06,

921.08, 921.09, 921.11, or 921.13 of the Revised Code shall be required to obtain a license or permit to operate or to be otherwise regulated in such capacity by any local ordinance, or to meet any other condition except as otherwise provided by statute or rule of the United States or of this state.

(D) Section 921.09 of the Revised Code does not apply to an individual who uses only ground equipment for the individual or for the individual's neighbors, provided that the individual meets all of the following requirements:

- (1) Is licensed under section 921.11 of the Revised Code;
- (2) Operates farm property and operates and maintains pesticide application equipment primarily for the individual's own use;
- (3) Is not regularly engaged in the business of applying pesticides for hire or does not publicly hold oneself out as a pesticide applicator;
- (4) Meets any other requirement established by rule.

(E) Section 921.06 of the Revised Code relating to licenses and requirements for their issuance does not apply to licensed physicians or veterinarians applying pesticides to human beings or other animals during the normal course of their practice, provided that they are not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation or do not publicly hold themselves out as commercial applicators.

(F) Division (S) of section 921.24 of the Revised Code does not apply to a pesticide dealer who distributes restricted use pesticides to a nonresident who is licensed in another state having a state plan approved by the United States environmental protection agency.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.27. Seizure of illegal pesticides.

(A) If the director of agriculture has reasonable cause to believe that a pesticide or device is being distributed, stored, transported, or used in violation of this chapter or of any rules, it shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the locality in which the pesticide or device is located.

(B) If the article is condemned, it shall, after entry or decree, be disposed of by destruction or sale as the court may direct and the proceeds, if the article is sold, less legal costs, shall be paid to the pesticide program fund created in section 921.22 of the Revised Code. The article shall not be sold contrary to this section. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that the article be delivered to the owner thereof for relabeling or reprocessing.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571 (Eff 7-27-90); 149 v S 217, § 3, eff. 7-1-2004. §

§ 921.28. Damage claims.

A person who claims damages from a pesticide application shall notify the director of agriculture and the pesticide applicator by submitting an oral or written statement of alleged damages. The statement shall contain all of the following:

(A) The name of the person responsible for the application of the pesticide;

(B) The name of the owner or operator of the land on which the crop is grown and for which damages are claimed;

(C) The date on which the alleged damage occurred; (D) Such other information the director requires.

Upon receipt of the statement, the director may institute proceedings in accordance with sections 921.01 to 921.29 of the Revised Code and the rules he adopts thereunder.

HISTORY: 136 v H 1015 (Eff 9-1-76); 145 v S 134. Eff 6-20-94.

§ 921.29. State's lien for fines, penalties, costs, damages.

Fines, penalties, costs, and damages assessed against a person in consequence of violations of this chapter, as provided in this chapter or any other section of the Revised Code, shall be a lien in favor of the state upon the real and personal property of the person, upon the filing of a judgment or an order of the director of agriculture with the county in which the real and personal property is located. The real and personal property of the person shall be liable to execution for the fines, penalties, costs, and damages by the attorney general, who shall deposit any proceeds from an execution upon the property in the pesticide program fund created in section 921.22 of the Revised Code.

HISTORY: 143 v H 571 (Eff 7-27-90); 149 v S 217, § 3, eff. 7-1-2004.

§ 921.30. Written notice.

Nothing in this chapter or any rule adopted under it shall be construed to require the director of agriculture to report any findings to the appropriate prosecuting authority for proceedings in prosecution of, or issue any order or institute any enforcement procedure for, a violation of this chapter or a rule adopted under it whenever the director believes that the public interest will be best served by a suitable written notice of warning. A person who receives a written notice of warning may respond in writing to the notice.

HISTORY: 149 v S 217, § 3, eff. 7-1-2004.

§ 921.31. Effect of child support default.

On receipt of a notice pursuant to section 3123.43 of the Revised Code, the director of agriculture shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a license, certificate, or permit issued pursuant to this chapter.

HISTORY: 146 v H 167 (Eff 11-15-96); 148 v S 180 (Eff 3-22-2001); 149 v 217, § 3, eff. 7-1-2004.

§ 921.99. Penalties.

(A) Whoever violates this chapter or rules adopted under it, except division (G) or (P) of section 921.24 of the Revised Code, is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on a subsequent offense.

(B) Whoever violates division (G) or (P) of **section 921.24** of the Revised Code is guilty of a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense.

(C) No recovery of damages shall be allowed from administrative action taken or for "stop sale, use, or removal" if the court finds that there was probable cause for that action.

HISTORY: 136 v H 1015 (Eff 9-1-76); 143 v H 571 (Eff 7-27-90); 145 v S 134 (Eff 6-20-94); 146 v S 2 (Eff 7-1-96); 149 v S 217, § 3, eff. 7-1-2004.