

# PESTICIDE LAWS AND RULES



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**January 13, 2016**  
**OHIO PESTICIDE LAWS and RULES**

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January 12, 2016

**921.01 Pesticide 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, the 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 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.

Effective Date: 07-01-2004

**921.02 Pesticide registration.**

(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) Beginning January 1, 2007, each applicant shall pay a registration and inspection fee of one hundred fifty dollars 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 of seventy-five dollars 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 of seventy-five dollars for each product name and brand registered for the applicant. The penalty fee shall be added to the original fee of one hundred fifty dollars 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.

(I) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Effective Date: 07-01-2004; 06-30-2005

### **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 agricul-

ture 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.

Effective Date: 09-01-1976

**921.04 Protection of trade secrets or commercial or financial information.**

(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.

Effective Date: 09-01-1976

**921.05 Refusal, 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.

Effective Date: 09-01-1976

### **921.06 Commercial applicator license.**

(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 educational service center, a community school established under Chapter 3314. of the Revised Code, or a chartered or nonchartered nonpublic school

that meets minimum standards established by the state board of education;

(viii) State institutions of higher education as defined in section 3345.011 of the Revised Code, nonprofit institutions holding a certificate of authorization pursuant to Chapter 1713. of the Revised Code, institutions holding a certificate of registration from the state board of career colleges and schools and program authorization for an associate or bachelor's degree program issued under section 3332.05 of the Revised Code, and private institutions exempt from regulation under Chapter 3332. of the Revised Code as prescribed in section 3333.046 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 of license 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.

(E) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Effective Date: 07-01-2004; 04-15-2005

### **921.08 Licensing of nonresident applicators and operators.**

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.

Effective Date: 07-01-2004

### **921.09 Pesticide business license.**

- (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 all 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.

(I) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Effective Date: 07-01-2004

### **921.10 Effective liability insurance policy or other evidence of financial responsibility.**

(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.



Effective Date: 07-01-2004

**921.11 Applying restricted use pesticides.**

- (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.
- (D) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Effective Date: 07-01-2004

**921.12 Examinations.**

- (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.

Effective Date: 07-01-2004

### **921.13 Pesticide dealer license.**

(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.

(D) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Effective Date: 07-01-2004

### **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.

Effective Date: 07-01-2004

### **921.15 Pesticides having unreasonable 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.

**921.16 Administrative rules.**

(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 deadlines and time periods for registration, registration renewal, late registration renewal, and failure to register under section 921.02 of the Revised Code; the fees for registration, registration renewal, late registration renewal, and failure to register under section 921.02 of the Revised Code that shall apply until the fees that are established under that section take effect on January 1, 2007; 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.

(B) The director shall adopt rules that establish a schedule of civil penalties for violations of 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. All money collected under this division shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

(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)(1) 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.

Effective Date: 07-01-2004; 06-30-2005

**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.

Effective Date: 07-27-1990

**921.18 Director of agriculture - powers and duties.**

(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.

Effective Date: 07-01-2004

### **921.19 Government use of pesticides.**

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.

Effective Date: 07-01-2004

**921.21 Director may cooperate with federal and state agencies - agreements.**

The director of agriculture may cooperate with, and enter into cooperative agreements with any official agency of the federal government, of this state or its subdivisions, or with any agency of another state and may enter into and receive grants-in-aid from them for the purpose of carrying out sections 921.01 to 921.29 of the Revised Code.

Effective Date: 07-27-1990

**921.22 Pesticide program fund.**

The pesticide, fertilizer, and lime program fund is hereby created in the state treasury. The fund shall consist of money credited to it under this chapter and Chapter 905. of the Revised Code and rules adopted under them 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 those chapters or rules adopted under them. The director shall use money in the fund to administer and enforce those chapters and rules adopted under them.

The director shall keep accurate records of all receipts into and disbursements from the fund and shall prepare, and provide upon request, an annual report classifying the receipts and disbursements that pertain to pesticides, fertilizers, or lime.

Effective Date: 07-01-2004

**921.23 Disciplinary actions.**

The director of agriculture may suspend, prior to a hearing, for not longer than ten days, and after the opportunity for a 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.

Effective Date: 07-01-2004; 04-15-2005

**921.24 Prohibited acts.**

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.

Effective Date: 07-01-2004

### **921.25 Civil penalties.**

(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 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 em-

ployer 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.

Effective Date: 07-01-2004

### **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 that 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 follow-

ing 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.

Effective Date: 07-01-2004

### **921.27 Seizing 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, fertilizer, and lime 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.

Effective Date: 07-01-2004

**921.28 Statement of alleged damages.**

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.

Effective Date: 06-20-1994

**921.29 Fines, penalties, costs, and damages are lien of state.**

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, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Effective Date: 07-01-2004

**921.30 Discretion of director.**

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.

Effective Date: 07-01-2004

**921.31 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, registration, or permit issued pursuant to this chapter.

Effective Date: 07-01-2004

**921.60 Pest control compact - pest control insurance fund.**

The pest control compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form as follows:

“PEST CONTROL COMPACT

Article I Findings

The party states find that:

- (a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately ten billion dollars from the deprecation of pests is virtually certain to continue, if not to increase.
- (b) Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.
- (c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other’s activities when faced with conditions of infestation and reinfestation.
- (d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

Article II Definitions

As used in this compact, unless the context clearly requires a different construction:

- (a) “State” means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
- (b) “Requesting state” means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.
- (c) “Responding state” means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.
- (d) “Pest” means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

(e) “Insurance Fund” means the Pest Control Insurance Fund established pursuant to this compact.

(f) “Governing Board” means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

(g) “Executive Committee” means the committee established pursuant to Article V (e) of this compact.

### Article III The Insurance Fund

There is hereby established a Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

### Article IV The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and the Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the service of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any,

of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

#### Article V Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and
2. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

#### Article VI Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests.



It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.
2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.
2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.
3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.
4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.
5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.
6. Such other information as the Governing Board may require consistent with the provisions of this compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the

Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

#### Article VII Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: Provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

#### Article VIII Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect

to expenditures and activities outside of party states.

#### Article IX Finance

- (a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.
- (b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.
- (c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of the claims.
- (d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV (g) of this compact, provided that the Governing Board take specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV (g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.
- (e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.
- (f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

#### Article X Entry Into Force and Withdrawal

- (a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.
- (b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### Article XI Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.”

Effective Date: 11-21-1973

**921.61 Cooperation with insurance fund.**

Consistent with the law and within available appropriations, the departments, agencies, and officers of this state may cooperate with the insurance fund established by the pest control compact.

Effective Date: 11-21-1973

**921.62 Copies of bylaws and amendments to be filed with secretary of state.**

Pursuant to Article IV (h) of the pest control compact, copies of bylaws and amendments thereto shall be filed with the secretary of state.

Effective Date: 11-21-1973

**921.63 Director of agriculture to serve as pest control compact administrator.**

The director of agriculture shall serve as the pest control compact administrator for this state and expenses he incurs in so serving shall be paid from the appropriations from ordinary contingent expenses of the department of agriculture.

Effective Date: 11-21-1973

**921.64 Director may request or apply for assistance from insurance fund.**

The director of agriculture, with the approval of the governor, may make a request or application for assistance from the insurance fund under Article IV (b) or Article VIII (a) of the pest control compact, whenever the director of agriculture believes that conditions exist which qualify the state for such assistance and that it would be in the best interest of the state to make the request.

Effective Date: 11-21-1973

**921.65 Executive head means the governor.**

As used in the pest control compact, with reference to this state, “executive head” means the governor.

Effective Date: 11-21-1973

**921.99 Penalty.**

(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.

Effective Date: 07-01-2004

**901:5-11-01 Definitions.**

As used in this chapter of the Administrative Code:

(A) “Anti-siphon device” means a check valve or mechanism used to prevent backflow on any pest control equipment drawing water directly from any supply.

(B) “Bulk pesticide” means any registered pesticide which is transported or held in an individual container having a capacity greater than fifty-five U.S. gallons liquid measure or one hundred pounds net dry weight.

(C) “Bulk repackaging” means the transfer of a registered pesticide from one bulk container having a capacity greater than fifty-five U.S. gallons liquid measure or one hundred pounds net dry weight to another bulk container having a capacity greater than fifty-five U.S. gallons liquid measure or one hundred pounds net dry weight in an unadulterated state in preparation for sale or distribution to another person.

(D) “Commercial lawn” means any cultivated turf, public or private, other than residential lawns, cultivated for aesthetic purposes.

(E) “Custom mixes or blends” means any pesticide which is combined with commercial feedstuffs or fertilizers on an individual contract basis, and which is delivered to the customer in total and not stored by the person mixing or blending the ingredients.

(F) “Director” means the director of the Ohio department of agriculture or an authorized representative thereof.

(G) “Drift” means the airborne movement of pesticides beyond the target site during application.

(H) "FIFRA" means the "Federal Insecticide, Fungicide, and Rodenticide Act," 7 U.S.C. 136 , as amended on August 3, 1996.

(I) "Non-mobile liquid bulk pesticide storage container" means a liquid bulk pesticide container which is not designed by its manufacturer to be readily moved when full of product.

(J) "Pesticide solicitor" means a pesticide business whose sole pesticide business activity is seeking to sell pesticide applications.

(K) "Public lawn" means any cultivated turf, public or private, cultivated for recreational use and includes by way of example but is not limited to golf course play areas, parks, and school yards.

(L) "Registered pesticide business location" or "registered location" means each location associated with a pesticide business that is used for the purpose of engaging in pesticide business activities in the state of Ohio, but does not include the location which is listed as the headquarters of the pesticide business to which the pesticide business license is issued.

(M) "Residential lawn" means cultivated turf within the close of a single- or multi-family dwelling of four units or less.

(N) The pesticide use categories recognized by the director for the purposes of commercial applicator licensing under section 921.06 of the Revised Code are defined as follows:

(1) "Aerial pest control" means the application of pesticides by aircraft.

(2) "Agricultural pest control" means the application of pesticides to any agronomic and horticultural crops, or to soils being prepared for the production of such crops, for the control of any pests other than vertebrates.

(a) "Agronomic pest control" means the application of pesticides to agronomic crops for the control of pests other than weeds and vertebrates. This pesticide-use category does not include the application of pesticides for control of pests in ornamental nursery stock or in the production of turf, as defined in paragraphs (N)(6) and (N)(8) of this rule, respectively

(b) "Horticultural pest control" means the application of pesticides to fruit and vegetable crops for the control of pests other than weeds and vertebrates.

(c) "Agricultural weed control" means the application of pesticides for the control of weeds in agronomic crops or horticultural crops. This pesticide-use category does not include the application of pesticides for control of weeds in ornamental nursery stock or in the production of turf, as defined in paragraphs (N)(6) and (N)(8) of this rule, respectively.

(d) "Seed treatment" means the application of pesticides to seed for the control of insects and disease organisms.

(e) "Tobacco sucker control" means the application of growth regulators to tobacco plants for the control of sucker growth.

(f) "Soil fumigation" means the application of fumigants to soil for the control of soil-inhabiting pests.

(3) "Aquatic pest control" means the application of pesticides to standing or running water, for the control of undesirable vegetation or animals, but does not include uses covered by commercial pesticide-use category 10(D), as defined in paragraph (N)(10) of this rule.

(a) “General aquatic pest control” means the application of pesticides to standing or running water, other than swimming pools, for the control of aquatic pests.

(b) “Boat antifoulant” means the application of restricted-use antifoulants to boats for the control of undesirable organisms.

(c) “Sewer root control” means the application of restricted-use pesticides to sewer pipes for the control of tree roots.

(4) “Forest pest control” means the application of pesticides to forested areas or forest products for the control of pests other than vertebrates.

(a) “General forest pest control” means the application of pesticides to forested areas for the control of tree pests and weeds, and for the selective elimination of unwanted wood species as a forest management practice.

(b) “Wood preservation” means the application of pesticides to wood products such as crossties, poles, shingles, posts or other wood products that are not part of a structure when treated and are or will be exposed to insects, fungi, marine pests, or weather. This category does not include the treatment for the control of termites and other wood destroying organisms in houses or in an area as a pretreatment prior to the construction of a structure.

(5) “Industrial vegetation control” means the application of pesticides to non-agricultural lands, such as roadways, public water courses, utility rights-of-way, or in close proximity to industrial sites, power stations, parking lots or similar areas for the control or eradication of unwanted vegetation.

(6) “Ornamental pest control” means the application of pesticides to ornamental plants or areas for the control of any pests except vertebrates.

(a) “General ornamental pest control” means the application of pesticides to control insects and diseases of exterior ornamental plants and trees, and weeds of exterior ornamental areas such as landscape beds, tree and shrub plantings, sidewalks, driveways, or similar areas.

(b) “Interior plantscape pest control” means the application of pesticides to control insects, diseases, and weeds of indoor ornamental plants in locations such as homes, offices, shopping malls, stores, or similar sites.

(c) “Ornamental weed control” means the application of pesticides to exterior ornamental areas such as landscape beds, tree and shrub plantings, sidewalks, driveways, or similar areas for the control or eradication of unwanted vegetation.

(d) “Greenhouse pest control” means the application of pesticides to control insects, diseases, and weeds of plants grown under glass or plastic cover.

(7) “Vertebrate animal control” means the application of pesticides other than fumigants for the control of pest birds whether within or outside structures, and for the control of rodents, and any other vertebrates, in situations other than covered under commercial pesticide-use category 10, as defined in paragraph (N)(10) of this rule.

(8) “Turf pest control” means the application of pesticides to lawns, turf, sod, or to soil areas being prepared for the production of turf for the control of pests except vertebrates. This category also covers the use sites as defined in pesticide use in category 6C “ornamental weed control.”

(9) “Animal pest control” means the application of pesticides to domestic animals which are held as agricultural commodities, or to structures in which they are confined, for the control of pests of such animals. (Application of pesticides by licensed veterinarians during the course of their normal practice is specif-

ically exempted by law.)

(10) “Domestic, institutional, structural, and health-related pest control” means the indoor or outdoor application of pesticides to control pests of humans, their dwellings, work spaces, and other structures used or occupied by humans, and the clothing, furnishings, and stored, processed, or manufactured food products contained therein.

(a) “General pest control” means the application of pesticides in or around human dwellings, industrial plants and business offices, food-handling establishments, schools, hospitals or other institutions, warehouses, grain elevators, or similar buildings to control pests, including rodents, of such structures or of the occupants, furnishings, or provisions of those structures, except for the control of pest birds and termites or fungi.

(b) “Termite control” means the application of pesticides in or around various structures, or to the ground prior to construction of a structure, for the control of termites and other invertebrate wood-destroying insects.

(c) “Fumigation” means the application of fumigants to structures, or commodities or equipment which are enclosed within structures, or other specially confined areas (including areas temporarily confined expressly for the purpose of fumigation) such as bins, rooms, cargo spaces, and boxcars, for the control of any pests contained within these structures or confined areas.

(d) “Mosquito, house fly, and other vector control” means the application of pesticides outdoors to control invertebrate pests which are a threat to public health or a nuisance to humans, such as mosquitoes, house flies, chiggers, and ticks, but does not include uses covered by commercial pesticide-use category (7), as defined in paragraph (N)(10) of this rule.

(11) “Specialized pest control” means the application of pesticides to the property of others under circumstances not covered by paragraphs (N)(1) to (N)(10) of this rule.

(12) “Wood-destroying insect diagnostic inspection” means the examination of a structure at the request of any party involved in a contemplated real estate transaction to determine if wood destroying insects are present in the structure, if there is evidence they either are or have been present in the structure, or the presence of any visible damage to the structure caused by wood-destroying insects and the generation of a written report of the findings of the examination.

(O) The pesticide use categories recognized by the director for the purposes of private applicator licensing under section 921.11 of the Revised Code:

(1) “Grain and cereal crops,” for applications of restricted-use pesticides, except fumigants, to agronomic field crops including but not limited to corn, grain sorghums, other small grains, soybeans and sweet corn.

(2) “Forage crops and livestock,” for applications of restricted-use pesticides, except fumigants, to crops grown primarily for use as hay, forage, fodder, or ensilage, and includes but is not limited to such crops as corn and legumes, and to domestic animals which are held as agricultural commodities and their quarters.

(3) “Fruit and vegetable crops,” for applications of restricted-use pesticides, except fumigants, to orchard fruit crops, and small fruits including but not limited to strawberries, brambles and grapes, field-grown vegetables, sugar beets, sweet corn and other horticultural crops grown primarily for human consumption.

(4) “Nursery and forest crops,” for applications of restricted-use pesticides, except fumigants, to commercial nursery crops including but not limited to trees, shrubs, grasses and herbaceous plants produced for replanting for their ornamental value or for future fruit production; and tree crops produced for use as



Christmas trees or for their utilitarian value.

(5) "Greenhouse crops," for applications of restricted-use pesticides, except fumigants, to crops grown for food production or ornamental value under an impervious surface large enough to permit worker entry.

(6) "Fumigation," for applications of restricted-use fumigants to soil, grain storage, greenhouse areas or any other confined areas.

(7) "Specialty uses," for applications of restricted-use pesticides, except fumigants, for purposes not covered by paragraphs (O)(1) to (O)(6) of this rule, including but not limited to applications for wood preservation, aquaculture, seed treatment, sod production, and for controlling pests of tobacco, ponds and non-cropland areas.

Private applicators licensed in the pesticide use categories covered by paragraphs (O)(1) to (O)(6) of this rule shall be deemed to be licensed under paragraph (O)(7) of this rule.

(P) "Wood destroying insects" include termites, carpenter ants, carpenter bees and re-infesting wood boring beetles.

R.C. 119.032 review dates: 04/26/2013 and 04/26/2018

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.01

Prior Effective Dates: 1/11/1977, 6/11/1984, 1/30/1991, 10/29/1998, 10/1/2001, 7/1/2004, 4/3/2009, 5/10/2010, 10/30/2010

### **901:5-11-02 Trained servicepersons, safety and restrictions.**

(A) Trained servicepersons.

(1) No employee shall act as a trained serviceperson unless, before the employee's first occupational exposure to pesticides, the employee has:

(a) Read the Ohio department of agriculture manual "Safety Training Guide for Trained Servicepersons," or

(b) Completed an employer sponsored training program which provides training equivalent to that provided in the manual.

(2) The employee and the immediate supervisor shall verify in writing that the employee has either read the manual or received equivalent training prior to the employee's first exposure to pesticides. The written verification shall be kept on file by the employer throughout the trained serviceperson's period of employment and for three years following termination of the trained serviceperson's employment. This written verification shall be made available to the director of agriculture for inspection.

(3) No trained serviceperson shall apply pesticides for hire unless the trained serviceperson is directly supervised by a commercial applicator that is located within either twenty-five miles distance or two hours time to the work site during the trained serviceperson's pesticide application activities.

(B) No person shall:

- (1) Use a pesticide except in accordance with the label which is registered with the Ohio department of agriculture, or in accordance with sections 5, 18, or 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 - 136y (2012) and the rules adopted thereunder.
- (2) Employ to perform an activity subject to section 921.01 of the Revised Code:
  - (a) Any person who is forbidden such employment by state or federal labor laws; or
  - (b) Any person who is mentally incompetent or for any reason is unable to satisfactorily communicate with or understand instructions given by the pesticide applicator.
- (3) Permit any person under the age of eighteen years to handle, mix, or load a pesticide displaying on its label the signal words “danger - poison” without on-site supervision by a pesticide applicator.
- (4) Permit any person to mix or load pesticides in an area where the light, whether natural or artificial, is insufficient to read the pesticide label and work in a safe manner.
- (5) Operate application equipment which draws water from surface waters or public water supplies unless the equipment has an effective anti-siphon device to prevent backflow.
- (6) Operate equipment for the application of pesticides, including such auxiliary equipment as hoses and metering devices in such conditions or in such a manner as to result in leakage, spillage, dripping, backflow, vapors, or drift.
- (7) Knowingly loan, rent, or permit the use of applicator equipment owned or controlled by that person which does not comply with the requirements described in paragraphs (B)(5) and (B)(6) of this rule, or which has not been thoroughly cleaned in a manner to prevent contamination of a pesticide solution or other formulation by previous use.
- (8) Apply pesticide to an area or a crop in such a manner or at such a time that adjacent crops, pasture land, water or other areas will be damaged or contaminated.
- (9) Mix, load, or store agricultural pesticides within the perimeter of a migrant labor camp.
- (10) Distribute a restricted-use pesticide to a person who is not:
  - (a) A licensed pesticide dealer; or
  - (b) A properly licensed pesticide applicator, unless when making the distribution they receive verification that the ultimate user is a properly licensed pesticide applicator who holds a valid license or certification issued by the state in which the pesticide applicator applies the restricted-use pesticide.
- (11) Under authority of division (D) of section 921.16 of the Revised Code, use or cause to be used an ester formulation of 2, 4-D (2, 4-Dichlorophenoxy-acetic acid) within Madison township, Lake county, Ohio.
- (12) Apply herbicidal foliage sprays to woody vegetation by aircraft on rights-of-way when the wind velocity exceeds seven miles per hour at eye level.
- (13) Drive a moving vehicle while applying an herbicide to roadside vegetation within public right-of-way limits unless the spray is directed by a second

person or unless the applicator is using a vehicle equipped with a mounted spray boom which is designed to be operated by the driver.

(14) Apply by aircraft:

(a) Any pesticide without having first obtained licensure for both the aerial application pesticide-use category and the pesticide-use category appropriate to the particular pesticide being applied ; or

(b) Any rodenticide, avicide, or vertebrate repellent until the proposed application has been jointly approved by the director and by the division of wildlife of the Ohio department of natural resources; the application for such approval shall be submitted to both agencies fourteen days prior to planned treatment and shall include:

(i) The county, township and sections involved;

(ii) A clear description of areas to be treated;

(iii) Inclusive dates of intended operation;

(iv) The name of the pesticide and the formulation to include all active and inert ingredients;

(v) The name of the target pest; and

(vi) The effect which may be expected on non-target species in the area.

(15) Apply or cause to be applied any pesticide that is required to carry a special warning on its label indicating that it is toxic to honey bees, over an area of one-half acre or more in which the crop-plant is in flower unless the owner or caretaker of any apiary located within one-half mile of the treatment site has been notified by the person no less than twenty-four hours in advance of the intended treatment; provided the apiary is registered and identified as required by section 909.02 of the Revised Code, and that the apiary has been posted with the name and telephone number of the owner or responsible caretaker.

(16) Apply pesticides which are hazardous to honey bees at times when pollinating insects are actively working in the target area; however, application of calyx sprays on fruits and other similar applications may be made.

(C) No commercial applicator shall apply fumigants unless the commercial applicator is properly licensed in, and the application is made within, the following pesticide-use categories:

(1) "Soil fumigation" as defined in paragraph (N)(2)(f) of rule 901:5-11-01 of the Administrative Code;

(2) "Fumigation" as defined in paragraph (N)(10)(c) of rule 901:5-11-01 of the Administrative Code; or

(3) "Greenhouse pest control" as defined in paragraph (N)(6)(d) of rule 901:5-11-01 of the Administrative Code.

(D) Pesticide applicators shall:

(1) Provide to trained servicepersons, immediate family members, and subordinate employees working under the pesticide applicator's direct supervision the necessary safety equipment as set forth on the pesticide label or as required by the pesticide being used.

- (2) Acquaint trained servicepersons, immediate family members, and subordinate employees working under the pesticide applicator's direct supervision with any special hazards involved with those pesticides with which they might be in contact and instruct them in appropriate precautions to avoid those hazards.
- (3) Ensure that trained servicepersons, immediate family members, and subordinate employees working under the pesticide applicator's direct supervision do not apply pesticides in the absence of the supervising pesticide applicator unless the label of the pesticide they are applying is readily available to them at the worksite. The label of the pesticide shall be made available to the director for inspection during the application. Notwithstanding the foregoing, a pesticide applicator shall be present during application of a pesticide by their trained serviceperson, immediate family member or subordinate employee when the pesticide applicator's presence is required by the pesticide label.
- (4) Report to the department of agriculture:
- (a) By telephone within forty-eight hours after learning of any human illness requiring medical attention resulting from or allegedly resulting from a pesticide used by the pesticide applicator or a trained serviceperson, immediate family member, or subordinate employee working under the pesticide applicator's direct supervision. Such telephone notification shall be followed by a written report within seven calendar days.
  - (b) By written report within ten calendar days after learning of any property damage in excess of five hundred dollars resulting from or allegedly resulting from a pesticide used by the pesticide applicator or a trained serviceperson, immediate family member, or subordinate employee working under the pesticide applicator's direct supervision.
- (5) Not apply a restricted use pesticide whose label requires that notice be given to occupants of nearby properties or that the area to be treated be posted with re-entry times unless those requirements have been met. This requirement is also applicable to all trained service persons, immediate family members, and subordinate employees working under the pesticide applicator's direct supervision.
- (6) Provide to each customer and resident of the applied property if requested, or required by the pesticide label, a printed or legibly written statement of the pesticide applied, the amount applied, the date of application, and any other pertinent information as required by the pesticide label. This requirement is also applicable to all trained service persons, immediate family members, and subordinate employees working under the pesticide applicator's direct supervision.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.01

Prior Effective Dates: 1/11/1977, 8/2/96, 10/29/98, 6/25/99, 7/1/2004, 11/18/05

### **901:5-11-03 Pesticide business license and registered locations.**

(A) The initial and renewal fee for each pesticide business license and registered location shall be thirty-five dollars per licensing period. This fee is non-refundable. If an application for license renewal is not postmarked prior to the expiration of the current licensing period as established in paragraph (B) of this rule, this fee shall be increased by fifty per cent.

(B) The licensing period for pesticide businesses shall commence on the first day of October of each year and expire on the last day of September of the following year.

(C) An applicant shall be issued a pesticide business license if the applicant has satisfied the licensing requirements set out in Chapter 921. of the Revised Code and the rules adopted thereunder, and the following have been received by the director:

(1) A completed formal application listing the headquarters of the pesticide business and each registered location;

(2) Proof of financial responsibility as required by paragraph (E) of rule 901:5-11-07 of the Administrative Code. For a license renewal, failure to provide acceptable proof of financial responsibility prior to the first day of October of each year shall cause the fee to be increased by fifty per cent in accordance with paragraph (A) of this rule; and

(3) The fee as set out in paragraph (A) of this rule.

(D) The holder of a pesticide business license may add a registered location to the pesticide business license at any time by submitting an amended application, and the initial licensing fee as set out in paragraph (A) of this rule.

Five Year Review (FYR) Dates: 11/06/2015 and 01/01/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.09

Prior Effective Dates: 1-1-77; 2-1-94; 10-29-98; 10-1-01; Replaces: 901:5-11-13, eff 7-1-04

### **901:5-11-04 Commercial applicator license.**

(A) The initial and renewal fee for a commercial applicator license shall be thirty-five dollars per licensing period. This fee is non-refundable. If an application for license renewal is not postmarked prior to the expiration of the current licensing period as established in paragraph (B) of this rule, this fee shall be increased by fifty per cent.

(B) The licensing period for commercial applicators shall commence on the first day of October of each year and expire on the last day of September of the following year.

(C) An applicant shall be issued a commercial applicator license if the applicant has satisfied the licensing requirements set out in Chapter 921. of the Revised Code and the rules adopted thereunder, and the following have been received by the director:

(1) A completed formal application;

(2) Demonstration that the applicant possesses the adequate knowledge and competence to apply pesticides and conduct diagnostic inspections within the pesticide use categories for which the applicant seeks licensure, as set forth in rule 901:5-11-08 of the Administrative Code; and

(3) The fee as set forth in paragraph (A) of this rule.

(D) Nonresident commercial applicators may be exempted from the requirements of paragraph (C)(2) of this rule for those pesticide use categories in which they are currently licensed in another state so long as the following conditions are met:

- (1) The nonresident commercial applicator has filed with the director an official copy of the nonresident commercial applicator's valid license which has been verified by the Ohio department of agriculture; and
- (2) The Ohio department of agriculture has found that the requirements for obtaining licensure and determining competence in the licensing state are deemed to be substantially equivalent to those in Ohio.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.06, 921.16

Prior Effective Dates: 1-1-77; 2-1-94; 10-29-98; 10-1-01; 4/30/02; 7-1-04

### **901:5-11-05 Private applicator license.**

(A) The initial and renewal fee for a private applicator license is thirty dollars per licensing period.

(B) The licensing period for private applicators shall commence on the first day of April and shall expire on the last day of March of the third year following issuance of the license.

(C) An applicant shall be issued a private applicator license if the applicant has satisfied the licensing requirements set out in Chapter 921. of the Revised Code and the rules adopted thereunder, and the following have been received by the director:

- (1) A completed formal application;
- (2) Demonstration that the applicant possesses the adequate knowledge and competence to apply pesticides within the pesticide use categories for which the applicant seeks licensure, as set forth in rule 901:5-11-08 of the Administrative Code; and
- (3) The fee as set forth in paragraph (A) of this rule.

(D) Nonresident private applicators may be exempted from the requirements of paragraph(C) (2) of this rule for those pesticide use categories in which they are currently licensed in their state of residence if:

applicator's valid license; and

- (2) A reciprocal agreement has been reached with the licensing state finding that the requirements for obtaining licensure and determining competence in the licensing state are deemed to be substantially equivalent to those in Ohio.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.11, 921.16

Rule Amplifies: 921.08, 921.11

Prior Effective Dates: 7-1-04

**901:5-11-06 Pesticide dealer license.**

(A) The initial and renewal fee for a pesticide dealer license shall be thirty-five dollars per licensing period. This fee is non-refundable.

(B) The licensing period for pesticide dealers shall commence on the first day of October of each year and expire on the last day of September of the following year.

(C) An applicant shall be issued a pesticide dealer license if the applicant has satisfied the licensing requirements set out in Chapter 921. of the Revised Code and the rules adopted thereunder, and the following have been received by the director:

(1) A completed formal application; and

(2) The fee as set forth in paragraph (A) of this rule.

Five Year Review (FYR) Dates: 11/06/2015 and 01/01/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.13, 921.16

Prior Effective Dates: 10-28-98; 4-1-03; Replaces former 901:5-11-12, eff 7-1-04

**901:5-11-07 Financial responsibility.**

(A) Applicability.

(1) Paragraph (B) of this rule shall apply to all pesticide businesses, except pesticide businesses whose activities are limited to:

(a) Conducting wood-destroying insect diagnostic inspections;

(b) Application of boat antifoulants;

(c) Seed treatment; or

(d) Those performed as a pesticide solicitor.

(2) Paragraph (C) of this rule shall apply to pesticide businesses that make wood-destroying insect diagnostic inspections, whether or not that business also

applies pesticides.

(3) Paragraph (D) of this rule shall apply to pesticide businesses that conduct aerial pest control applications.

(4) Paragraph (E) of this rule shall apply to all pesticide businesses that are required to maintain financial responsibility under this rule.

(B) Every pesticide business shall have in force a comprehensive general liability insurance policy and, either a separate professional liability insurance policy or an endorsement covering liability arising from the application of pesticides in each of the pesticide use categories in which the commercial applicators employed by the business are licensed. The policy and endorsements shall be in force for the entire term of the pesticide business license, shall provide coverage for each registered location associated with the pesticide business, and shall be issued by a company permitted to do business in Ohio. The policy shall provide coverage for bodily injury, property damage, products, and completed operations. The policy shall contain the following minimum limits of insurance:

- (1) Three hundred thousand dollars policy general aggregate;
- (2) Three hundred thousand dollars per occurrence limit; and
- (3) Three hundred thousand dollars products and completed operations aggregate.

(C) Every pesticide business which is also licensed in the pesticide use category of wood-destroying insect diagnostic inspection shall obtain either a specific liability policy or an endorsement on an existing comprehensive general liability policy covering claims which arise from errors or omissions in the performance of wood-destroying insect diagnostic inspections. The policy and endorsements shall be in force for the entire term of the license and shall be issued by a company permitted to do business in Ohio. The minimum amount of coverage for the policy shall be fifty thousand dollars per occurrence with an aggregate limit of at least one hundred thousand dollars.

(D) Every pesticide business that conducts aerial pest control applications shall have in force a comprehensive chemical liability insurance policy for liability arising from the application of pesticides from aircraft. The policy and endorsements shall be in force for the entire term of the pesticide business license and shall be issued by a company permitted to do business in Ohio. The policy shall provide coverage for bodily injury, property damage, and products. The policy shall contain the following minimum limits of insurance:

- (1) One hundred thousand dollars property damage coverage per occurrence; and
- (2) One hundred thousand dollars bodily injury (excluding passengers) coverage for each person; and
- (3) Three hundred thousand dollars bodily injury (excluding passengers) coverage per occurrence.

(E) Every person applying for a pesticide business license shall submit with their license application either a certificate of insurance or a binder verifying that they meet the requirements of this rule. The certificate of insurance or binder shall contain:

- (1) The name and address of the issuing company;
- (2) The name and address of the insured pesticide business;
- (3) The name and address of each registered location associated with the insured pesticide business;



- (4) The effective date and expiration date of the insurance policy;
- (5) The policy number;
- (6) A statement verifying that the policy covers liability arising from:
  - (a) The application of pesticides, if the pesticide business performs pesticide applications; and
  - (b) The performance of wood-destroying insect diagnostic inspections, if the pesticide business performs wood-destroying insect diagnostic inspections.
- (7) The limits of insurance; and
- (8) A clause which states in the same or similar language: “In the event of cancellation for non-payment, the insurer agrees to advise the Ohio Department of Agriculture, Pesticide Regulation Section, 8995 East Main Street, Reynoldsburg, Ohio 43068, by written notice ten days prior to the effective date of cancellation. If the policy is, for any other reason, cancelled, not renewed, or there is a material change the insurer agrees to give the Ohio Department of Agriculture thirty days written notice.”

R.C. 119.032 review dates: 05/19/2010 and 05/19/2014

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.10

Prior Effective Dates: 1-26-73; 1-1-77; 10-29-98; 4-1-03; Replaces former 901:5-11-06, eff 7-1-04

### **901:5-11-08 Demonstration of competence.**

(A) Each applicant for a pesticide applicator license shall show that the applicant possesses adequate knowledge of general pesticide application principles and competence to apply pesticides by passing a general core examination and an additional examination for each applicable pesticide-use category. In addition, each applicant for a commercial applicator license shall demonstrate adequate knowledge and competence to conduct diagnostic inspections within the pesticide-use categories for which the applicant seeks licensure.

- (1) Opportunity to take examinations will be provided at such times and places as determined by the director in consideration of the number and location of requests.
- (2) A pesticide applicator may apply to broaden their license to include a new pesticide-use category at any time.
- (3) In establishing the standards for training and examination of pesticide applicators, the director will be guided by the standards set forth in the “State Plan for Certification of Applicators” as approved by the administrator of the United States department of environmental protection.
- (4) Each applicant for licensure as a commercial applicator in the category of wood-destroying insect diagnostic inspection shall submit a valid certificate verifying that they have completed the Ohio wood-destroying insect inspection program.

(5) Applicants who fail to pass the general core examination shall not be issued a license.

(6) Except for private applicators, applicants who fail to pass at least one pesticide-use category examination shall not be issued a license.

(7) Applicants who fail to pass an examination may apply to be re-tested at a pre-arranged time and location, but no earlier than five business days after a previous examination except by special permission of the director.

(8) Applicants who either fail the general core examination or fail to pass at least one pesticide-use category may re-utilize passing scores on either the general core exam or a pesticide use category so long as those scores are not older than one year. If the applicant is unable to obtain licensure within that year, the applicant must pass both a new core examination and a new pesticide-use category examination, even if the applicant had previously received a passing score on either the core or a pesticide-use category examination.

(B) Re-examination shall be required at three-year intervals, except that a pesticide applicator may be exempted from re-examination if they have participated in the minimum amount of approved training during the three years prior to the date of their scheduled re-examination. Notwithstanding the minimum number of hours set forth below, a licensee shall participate in at least one-half hour of training for each pesticide-use category in which they are licensed in order to avoid re-examination in that particular category.

(1) For commercial applicators, the minimum amount of approved training required shall be five hours. Of the five hours, at least one hour shall consist of core training material and at least one-half hour shall consist of training material specific to the pesticide-use category in which the commercial applicator is licensed.

(2) For private applicators:

(a) Licensed in pesticide use categories other than the category of specialty uses, the minimum amount of approved training required shall be three hours. Of the three hours, at least one hour shall consist of core training material and at least one half hour shall consist of training material specific to each pesticide-use category in which the private applicator is licensed.

(b) Licensed only in the category of specialty uses, the minimum amount of approved training required shall be three hours. Of the three hours, at least one hour shall consist of core training material.

(C) In no case shall an applicant be permitted to take an examination or a re-examination unless the applicant has presented at the time of the examination or re-examination a current government-issued photographic identification to the ODA representative administering the examination or re-examination. This paragraph shall not apply to an applicant whose religion does not permit the applicant to be photographed.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.12

Prior Effective Dates: 7-1-04, 5/10/10

**901:5-11-09 Notification requirements for lawn pesticide applicators.**

(A) No commercial applicator or trained serviceperson working under the direct supervision of a commercial applicator shall:

(1) Apply any lawn pesticides to residential lawns in any municipal corporation or subdivided area of a township unless:

(a) They provide the following information in writing to the person on whose property the chemical is being applied. This information shall be provided prior to or at the time of application:

(i) The brand or common name of each lawn pesticide applied;

(ii) The chemical type (fungicide, herbicide, or insecticide);

(iii) Any special instruction on the label of the lawn care pesticide product applicable to the customer;

(iv) The company name and telephone number of the applicator's employer;

(v) The date and time of the application;

(vi) Any other pertinent information as required by the label.

(vii) A written statement regarding lawn signs posted in accordance with paragraph (A)(1)(c) of this rule which reads as follows: "Lawn posting signs must remain in place for twenty-four hours following lawn application."; and

(b) The pesticide business has attempted the notification required by paragraph (B)(1) of this rule.

(c) They have placed at conspicuous points, including, but not limited to, common access points on the property to which lawn pesticides have been applied, one or more signs:

(i) The sign shall measure at least five inches by four inches on adjacent sides and be attached to the upper portion of a dowel or other supporting device. The bottom edge of the sign must be at least fourteen inches from the ground and the sign must be weatherproof for twenty-four hours.

The sign shall be in the form and carry the wording and warning symbol illustrated:



The required warning symbol and lettering on the sign shall be in the same proportion as the wording and warning symbol illustrated herein and in proportion to the actual size of the sign. No company logos or other advertising graphics may appear on the face of the sign. The signs posted at access points must be within five feet of the access point.

(ii) No other signs may be posted on the treated property by the pesticide business within thirty feet of the above sign.

(iii) After January 1, 2016, no additional information may appear on the reverse side of the sign unless it is identical to the face of the sign.

(2) Apply any lawn pesticides to commercial lawns in any municipal corporation or subdivided area of a township unless:

(a) They have provided the information required in paragraph (A)(1)(a) of this rule and the date and approximate time of application with the individual on site who is responsible for administration of the property on which the lawn pesticide is applied.

(b) They have posted the signs required under paragraph (A)(1)(c) of this rule in the manner prescribed therein.

(3) Apply any lawn pesticides to public lawns in any municipal corporation or subdivided area of a township unless:

(a) They have provided the information required in paragraph (A)(1)(a) of this rule and the date and approximate time of application to the individual on site who is responsible for administration of the property on which the lawn pesticide is applied. The information required under paragraph (A)(1)(a)(vii) of this rule may be omitted if signs have been permanently placed in accordance with paragraph (A)(3)(b) of this rule.

(b) They have either posted the signs required under paragraph (A)(1)(c) of this rule in the manner prescribed therein or they have permanently placed at common access points to the property a sign no less than eight inches by ten inches with the legend: "PERIODIC APPLICATION OF LAWN PESTICIDES - INQUIRE AT: (location where information may be obtained)." The designated location shall be a site which is accessible to the public during normal hours of operation.

(c) The information in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule must be made available to the public upon request when signs are posted in accordance with paragraph (A)(1)(c) of this rule.

(d) The information in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule must be obtainable at the location designated on signs which are permanently placed in accordance with paragraph (A)(3)(b) of this rule.

(B) The pesticide business shall, for applications made under paragraph (A)(1) of this rule:

(1) Make a reasonable attempt to provide, on or before the business day preceding the applications, the date and approximate time of application, and the name and telephone number of the pesticide business, to any occupant of a residence whose property abuts the treated property and who has notified the pesticide business in a writing that includes the occupant's name, mailing address, and telephone number, that they wish to receive prior notice of pesticide applications;

(2) Make available to in writing all the information listed in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule to an occupant of a residence whose property abuts the treated property and who contacts the pesticide business following an application made under this rule requesting information about that application; and

(3) Retain for a period of three years the name, address and telephone number of each person who has requested notification under this paragraph. These records shall be complete, current and in a form that accommodates inspection by the director. Prior to deleting these records at the end of three years, the pesticide business shall notify the person that their record is going to be deleted. The pesticide business shall not delete the record for any person who indicates in writing that they wish to continue receiving notification under this paragraph.

For the purposes of this paragraph, properties which are completely separated from the treated property by a right-of-way, or which share with the treated property a single common point along the perimeters of the properties are not considered abutting properties.

(C) No pesticide business or employee of a pesticide business shall bear liability for the removal by unauthorized persons of the signs required by this rule except that no employee of the pesticide business shall remove the signs prior to twenty-four hours following lawn pesticide application.

(D) Any information required to be provided under paragraph (A) of this rule may, if the person to whom the information is to be given is absent or inaccessible at the time the attempt is made, be left at that person's place of residence or business.

(E) Paragraphs (A)(1), (A)(2) and (A)(3) of this rule do not apply to any commercial applicator while making the following pesticide applications:

(1) Any application to any property that is an agricultural district or that would meet the eligibility requirements established for an agricultural district under Chapter 929. of the Revised Code, on which agricultural commodities are or will be produced;

(2) Any application for the purpose of the maintenance, operation or construction of a public utility;

(3) Any treatment for the eradication or control of pests declared to be a nuisance by the director of the Ohio department of agriculture, director of the Ohio department of health or local health districts, and for which immediate application is necessary to prevent significant human, environmental, or economic harm.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.16

Prior Effective Dates: 6-5-89; 6-25-99; 7-1-04

**901:5-11-10 Recordkeeping.**

(A) Commercial applicators:

(1) Applying pesticides to areas other than structures or their contents shall record, in English, on the date of application the following information for each application made by the commercial applicator or trained servicepersons working under the commercial applicator's direct supervision:

- (a) Name of responsible commercial applicator and names of the trained servicepersons applying pesticides under the commercial applicator's direct supervision;
- (b) Name and address of person contracting for service;
- (c) Date of application;
- (d) Type and size of area to be treated;
- (e) Location or field identification number of treatment area, if different than the address in paragraph (A)(1)(b) of this rule;
- (f) Trade name (brand name) and EPA registration number of pesticides used;
- (g) Total amount of each pesticide product used;
- (h) If diluted, total volume of use dilution applied;
  - (i) Type of equipment used;
  - (j) Time of day of application, including the time of starting the actual application and the time of completion of application or, if uncompleted, the time when operations ceased for the day; and
- (k) Wind direction, velocity and air temperature.

(2) Applying pesticides to structures and their contents shall record, in English, on the date of application the following information for each application made by the commercial applicator or trained servicepersons working under the commercial applicator's direct supervision:

- (a) Name of responsible commercial applicator and names of the trained servicepersons applying pesticides under the commercial applicator's direct supervision;
- (b) Name and address of person contracting for service;
- (c) Date of application;

- (d) Pests to be controlled;
- (e) Locations and methods of treatment for each pesticide used;
- (f) Trade name (brand name) and EPA registration number of pesticides used;
- (g) Application concentration or dilution used for each pesticide and total volume applied;
- (h) Time of day of application, including the time of starting the actual application and the time of completion of application or, if uncompleted, the time when operations ceased for the day.

(3) Applying pesticides or monitoring devices to structures for the control or monitoring of termites, shall create before the application, a detailed drawing of the footprint of the structure to be treated. This drawing must include linear dimensions of the structure and, for liquid termiticide applications, the depth to footer on all exterior walls.

(4) Utilizing bait or monitoring devices in and around structures for the monitoring or control of termites shall create in English on the date of installation and subsequent monitoring of those stations, a record which includes all information required in paragraphs (A)(2)(a), (A)(2)(b), (A)(2)(c), and (A)(2)(f) of this rule, as well as:

- (a) Total number of bait or monitoring devices installed or monitored;
- (b) Status of termite activity in each bait or monitoring device.

(5) Shall submit, within ten days following the date of completion, a copy of each record required under paragraphs (A)(1), (A)(2), (A)(3) and (A)(4) of this rule to the registered pesticide business location from which the application was conducted or the commercial applicator's employer if the employer is not a pesticide business.

(6) Applying pesticides under pesticide-use categories 2A, 2B, 2C, 2E, and 2F shall provide a copy of each pesticide application record to the person contracting for service, upon request or, if not requested, within thirty days after the pesticide application unless the person contracting for services has provided to the pesticide business a signed agreement allowing the pesticide business to retain that record.

(B) The employer of a commercial applicator that receives copies of records under this rule or paragraph (I) of rule 901:5-11-13 of the Administrative Code shall retain those records for a period of three years from the date of application or inspection and shall make those records available to the director.

(C) Pesticide businesses shall:

(1) Retain at the appropriate registered location, or at the pesticide business if there is no registered location, records submitted to them under this rule or paragraph (I) of rule 901:5-11-13 of the Administrative Code. Those records shall be maintained for a period of three years from the date of application or inspection and shall be made available to the director.

(2) Retain for three years following the employee's termination, written verification documenting that the employee has read the Ohio department of agriculture trained servicepersons manual or received equivalent training prior to the employee's first exposure to pesticides, as required by paragraph (A)(1) of rule 901:5-11-02 of the Administrative Code. This verification shall be made available to the director.

(D) Pesticide dealers shall:

(1) Keep a record of all sales of restricted-use pesticides made to pesticide applicators. This record shall be maintained at the registered pesticide business location where the sale was made using a format which includes the following items:

- (a) The name of the pesticide applicator;
- (b) The license number and pesticide-use categories listed on the pesticide applicator's license;
- (c) The brand name and quantity of pesticide purchased;
- (d) The EPA registration number and invoice number from the pesticide dealer's sales paperwork;
- (e) The date of sale; and
- (f) The name of the person receiving the pesticide if different from the pesticide applicator.

The pesticide dealer's copy of the records of sales shall be kept in a file and made available to the director during reasonable hours. The dealer shall retain such records for no less than three years.

(2) Compile an annual report of restricted-use pesticide sales records made for the period from the first day of July to the last day of June of the following calendar year. The report shall contain all of the information required under paragraph (D)(1) of this rule. If there are no sales of restricted-use pesticides for the period, the report shall so state. This report shall be made on a form designed by the director or on a computer-generated equivalent. The report shall be made available to the director during reasonable business hours. The dealer shall retain the report for no less than three years.

(3) Submit on or before the last day of July of each year to the pesticide regulation section of the Ohio department of agriculture a copy of the report for the most recently completed reporting period compiled pursuant to paragraph (D)(2) of this rule. The copy submitted under this paragraph shall be identical to the report compiled and retained pursuant to paragraph (D)(2) of this rule.

(E) Private applicators:

(1) Shall record the following information for each application on the date of application:

- (a) The responsible private applicator's name and license number;
- (b) The brand or product name and EPA registration number of the restricted use pesticide applied;
- (c) The total amount of the restricted use pesticide applied;
- (d) Location and/or field number for area treated and total area or acreage treated;
- (e) Crop treated; and
- (f) Month, day and year of application;



- (2) Shall submit on the date of application a copy of records required under paragraph (E)(1) of this rule to the private applicator's employer, if applicable.
- (3) Or their employers, if applicable, shall retain records generated pursuant to paragraph (E)(1) of this rule for a period of three years from the date of application and shall make those records available to the director. In the case of a crop site being leased or rented by a private applicator, the private applicator shall make the pesticide application record available within thirty days of the request by the owner of the land or an agent thereof.
- (4) Shall record the information required in paragraph (E)(1) of this rule for both restricted and general use pesticides applied under the exemption in division (D) of section 921.26 of the Revised Code.

R.C. 119.032 review dates: 04/26/2013 and 04/26/2018

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.14

Prior Effective Dates: 1/1/77, 2/1/94, 10/29/98, 10/1/01, 11/11/02, 7/1/04, 1/18/05, 4/3/09, 08/09/2009

**901:5-11-11 Storage, handling, disposal and distribution of pesticides, custom mixes and blends.**

(A) Storage:

(1) Pesticides shall not be stored:

- (a) In a manner that could result in contamination of animal feeds or commercial fertilizers ;
- (b) Above or against feed components, animal foods, foodstuffs, medications, or children's toys ; or
- (c) Loaded into aerial application equipment within one hundred yards of an airline passenger terminal.

(2) For display purposes:

- (a) Pesticides shall not be shelved above or against feed components, animal foods, foodstuffs, medications, or children's toys.
- (b) Shelving or display areas used for pesticide display shall be thoroughly cleaned before they are re-used for display of other products.
- (c) Pesticides having a skull and crossbones symbol on the label shall not be displayed in such manner as to be accessible to children.

(3) For liquid bulk pesticide facilities:

- (a) Bulk pesticide storage and handling facilities shall be sited in accordance with appropriate local, state and federal regulations.
- (b) Containers and accessory equipment used for the storage and handling of bulk pesticides shall be of materials and construction compatible with the pesticide stored and the conditions of storage as specified by the label instructions.

(c) Non-mobile liquid bulk pesticide storage container installations shall be constructed such that a secondary means of containment is provided and meets the following requirements unless otherwise waived or modified by the director:

(i) Secondary containment shall be constructed of sufficient thickness, density and composition so as to contain any spillage or discharged material ;

(ii) Secondary containment for all facilities that are constructed after August 1, 2011 shall be maintained to contain a minimum of one hundred ten per cent of the capacity of the largest single container plus the displacement of all other items located within the secondary containment ;

(iii) Secondary containment areas shall not contain a drain unless it is plugged to prevent the release of any spillage from the containment area ;

(iv) In the event of a spill or release of a pesticide in an amount equal to or exceeding the reportable quantity, as that term is defined by 40 C.F.R. 302.4(1989), the Ohio environmental protection agency shall be contacted in accordance with section 3750.06 of the Revised Code and the rules adopted thereunder ; and

(v) Non-mobile liquid bulk pesticide storage containers shall be secured or elevated high enough to prevent flotation in the event that the secondary containment structure fills with liquid.

(d) Upon delivery of the bulk pesticide, the registered product label shall be prominently displayed on the bulk pesticide storage container.

(e) Bulk pesticide storage containers shall be locked or access to bulk storage containers by unauthorized personnel shall be prevented when the facility is unattended.

(4) For facilities utilizing containers capable of holding at least four thousand pounds of dry bulk pesticides:

(a) Bulk pesticide storage and handling facilities shall be sited in accordance with appropriate local, state and federal regulations and be constructed of sufficient thickness, density and composition so as to contain any spillage or discharged material ;

(b) Containers and accessory equipment used for the storage and handling of bulk pesticides shall be of materials and construction compatible with the pesticide stored and the conditions of storage as specified by the label instructions ;

(c) Containers must be protected from wind and precipitation ;

(d) Containers must be placed on pallets or raised platforms ;

(e) Containers must be placed on an impervious surface that extends completely beneath the pallets or raised platforms and be enclosed by a curb that extends at least two feet beyond the perimeter of the containers and is a minimum of six inches high ; and

(f) The registered pesticide label shall be prominently displayed on the bulk pesticide storage container.

(5) Operators of facilities regulated under paragraphs (A)(3) and (A)(4) of this rule shall:

- (a) Initiate immediate repair to any visible signs of damage to the containment structures, containers or appurtenances in compliance with the following requirements:
- (i) Cracks and gaps in the containment facilities shall be sealed with materials that are compatible with the materials being stored there and,
  - (ii) All repairs shall commence on the day that damage is noticed and be completed within a time frame that is reasonable taking into account factors such as the weather, the availability of cleanup materials and the availability of the necessary equipment to make the repairs.
- (b) Ensure that all appurtenances necessary for loading and unloading bulk pesticides shall be located within a secondary containment facility or have their own means of secondary containment;
- (c) Ensure that all hoses used for loading and unloading bulk pesticides shall be equipped with shut-off valves at each end;
- (d) Ensure that all pipes and hoses shall be adequately supported to prevent sagging and shall be protected against risk of damage by vehicles engaged in loading and unloading;
- (e) Ensure that all appurtenances shall be made entirely of materials recommended by the manufacturer or specified in applicable standards for use with the type of pesticides they will carry and the types of materials used in the vessels and other appurtenances ;
- (f) Ensure that all facilities that are constructed after August 1, 2011 are constructed in such a manner as to prevent water and other liquids from seeping into or flowing onto these areas from adjacent land or structures ; and
- (g) Ensure that all facilities that are constructed after August 1, 2011 are constructed with materials that are compatible with the materials being stored there and are not made of asphalt or earthen materials.

(B) Transportation of bulk pesticide containers.

- (1) Bulk pesticide containers shall meet all applicable standards as specified by the label instructions and Ohio and United States departments of transportation requirements.
- (2) Bulk pesticide containers shall be thoroughly secured so as to prevent spillage of pesticide and damage to containers during transportation.
- (3) Bulk pesticide containers shall bear the registered product label for the material contained therein.
- (4) In the event of a spill or release of a pesticide in an amount equal to or exceeding the reportable quantity, as that term is defined by 40 C.F.R. 302.4(1989), the Ohio environmental protection agency shall be contacted in accordance with section 3750.06 of the Revised Code and the rules adopted thereunder.

(C) Handling and loading of bulk pesticides.

- (1) Bulk pesticides shall be handled, mixed, and loaded in a manner that will assure the protection of crops, livestock, the general public, and the environment. Physical and chemical properties shall be considered in the handling and loading of bulk pesticides.
- (2) Loading and mixing of bulk pesticides conducted at permanent distribution sites shall be on impervious surfaces with provisions sufficient to allow con-

tainment and recovery of any spillage, and in compliance with the following requirements:

(a) Owners or operators of permanent bulk pesticide distribution sites shall initiate immediate repair to any visible signs of damage to the impervious surfaces where bulk pesticides are loaded or mixed , including but not limited to:

(i) Cracks and gaps shall be sealed with materials that are compatible with the materials being handled there ; and

(ii) All repairs shall commence on the day that damage is noticed and be completed within a time frame that is reasonable taking into account factors such as the weather, the availability of cleanup materials and the availability of the necessary equipment to make the repairs.

(b) Owners or operators of permanent bulk pesticide distribution sites shall ensure that all impervious surfaces that are constructed after August 1, 2011 for loading and mixing of bulk pesticides, are constructed in such a manner as to prevent water and other liquids from seeping into or flowing onto these areas from adjacent land or structures.

(c) Owners or operators of permanent bulk pesticide distribution sites shall ensure that all impervious surfaces that are constructed after August 1, 2011 for loading and mixing of bulk pesticides, are constructed with materials that are compatible with the materials being handled there and are not made of asphalt or earthen materials.

(3) Prior to refilling, bulk pesticide containers must be thoroughly cleaned except when a sealed or dedicated recyclable bulk container is refilled with the same labeled pesticide and bears the same label as the pesticide immediately preceding it.

(4) All rinsates and minor spillages which have not resulted from a container failure and which accumulate in the secondary containment shall be disposed as provided by the pesticide's label, or in the absence of specific label instructions, shall be disposed in accordance with Chapter 3734. of the Revised Code and the rules adopted thereunder.

(D) Disposal of containers and unused pesticides:

(1) Empty pesticide containers and containers which have held pesticide-treated seed:

(a) Shall be disposed in a manner consistent with the pesticide label; or

(b) In the absence of specific label instructions, shall be triple-rinsed and disposed in accordance with Chapter 3734. of the Revised Code and the rules adopted thereunder; and

(c) Shall not be sold or re-used for any purpose, except as provided by paragraph (C)(3) of this rule, unless the containers have been properly cleaned and reconditioned in a manner approved by the director for their intended use or purpose. Re-use of such containers for the storage of human or animal food or water, or for the storage of cooking utensils, dishes or clothing is strictly prohibited.

(2) Unused pesticides and unwanted pesticide-treated seeds shall be disposed in a manner consistent with their labeling or, in the absence of specific label instructions, shall be disposed in accordance with Chapter 3734. of the Revised Code and the rules adopted thereunder.

(E) Distribution of bulk pesticides:

(1) Bulk pesticides may be repackaged for sale or delivery if:

(a) The establishments conducting the sale or delivery are registered as pesticide-producing establishments in accordance with section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act;

(b) A representative of said registered establishment is present when the product is repackaged for sale or delivery; and

(c) There is no change in any of the following as a result of the repackaging:

(i) The pesticide formulation;

(ii) The product labeling, except for the addition of the required EPA establishment number and net contents statement; or

(iii) The registrant as evidenced by the assigned EPA product registration number.

(d) A written authorization for the repackaging of bulk pesticides is obtained from the registrant, held at the facility conducting the repackaging and made available for inspection by the director.

(2) Bulk pesticides may be repackaged for sale using only containers which conform with paragraph (A)(3)(b) of this rule and if applicable, paragraph (B)(1) of this rule, and that are approved for this purpose by the seller of the pesticide.

(3) Scales and meters used for bulk pesticide sales shall meet the specifications, tolerances and other technical requirements for weighing and measuring devices as specified in the current "National Bureau of Standards Handbook 44," or as approved or exempted by the weights and measures division of the Ohio department of agriculture.

(4) Separate pumps and meters shall be used for each pesticide when distributed for sale.

(5) All bulk pesticides used for custom mixing, tank mixing or repackaging in Ohio must be registered and labeled in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act and Chapter 921. of the Revised Code and the rules adopted thereunder.

(F) Custom mixes or blends:

(1) Shall be prepared to the order of the user within the recommended range of the pesticide's labeling;

(2) Shall not be held in inventory;

(3) Or portions thereof, if divided for delivery, shall be labeled with the actual percentage of the pesticide within the custom mix or blend, together with the pertinent and proper directions for its use, purpose and cautions. This requirement may be met by attaching a copy of the end-use labeling of the pesticides used in the blend and

(4) Shall be prepared in an establishment that:

(a) Is registered with the United States environmental protection agency in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act; and

(b) Adheres to the "Good Manufacturing Practices for Medicated Feeds" as promulgated by the United States food and drug administration, 225

to226, revised April 1, 2003.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.15, 921.16

Rule Amplifies: 921.15, 921.16

Prior Effective Dates: 1-13-72; 1-1-77; 6-11-84; 10-29-98; 7-1-04, 7/17/11

**901:5-11-12 Pesticide registration.**

(A) Each pesticide distributed for use or sale in this state shall be registered with the director of agriculture, including those pesticides which are exempted from EPA registration under section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 - 136y (2012).

(B) The registration period for pesticides shall commence on the first day of July of each year and expire on the last day of June of the following year. Registration fees are non-refundable.

(C) An applicant shall be issued a pesticide registration if the applicant has satisfied the registration requirements set out in Chapter 921. of the Revised Code and the rules adopted thereunder, and the following have been received by the director:

(1) A completed formal application;

(2) 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; and

(3) The fee as set forth in division (F) of section 921.02 of the Revised Code.

(D) A pesticide registration shall be suspended or revoked, or shall not be issued when the director finds that:

(1) Its composition is such that it does not warrant the proposed claims for it;

(2) Its labeling, or any other material required to be submitted with its label, does not comply with the requirements of FIFRA and of Chapter 921. of the Revised Code and the rules promulgated thereunder; or

(3) It will not perform its intended function without unreasonable adverse effects on the environment.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.02, 921.16

Prior Effective Dates: 1-13-72, 1-1-77, 10-29-98, 4-30-02; 7-1-04, 08/05/2010

**901:5-11-13 Recordkeeping for wood-destroying insect diagnostic inspections for real estate transactions.**

Commercial applicators conducting wood-destroying insect diagnostic inspections for real estate transactions (hereinafter inspections) shall:

(A) Conduct all inspections in accordance with the practices set forth in the Ohio wood-destroying insect diagnostic inspection training program.

(B) Make a complete record of the findings of each inspection on form NPMA-33 which can be located at the Ohio department of agriculture, plant health division website here:[http://www.agri.ohio.gov/public\\_docs/forms/Plant/Plnt\\_Form\\_NPMA\\_33.pdf](http://www.agri.ohio.gov/public_docs/forms/Plant/Plnt_Form_NPMA_33.pdf). For the purposes of this chapter, a complete record means that the information recorded in NPMA-33 (hereinafter the form) shall be recorded pursuant to this rule. In the event of conflicting instructions for completing the form, the provisions of this rule shall apply for all inspections made within this state.

(C) Completely and accurately record the following information in section one of the form:

- (1) The name, address and telephone number of the pesticide business conducting the inspection;
- (2) The license number of the pesticide business or registered location conducting the inspection;
- (3) The date of the inspection;
- (4) The physical address of the property inspected;
- (5) The name, license number and original signature of the commercial applicator conducting the inspection; and
- (6) The specific structures inspected.

(D) Record the following in section two of the form for inspection findings on or within the specific structures inspected by:

- (1) Checking box A if there is no visible evidence of wood-destroying insect (hereinafter insect) activity;
- (2) Checking box B if there is visible evidence of insects observed; and
  - (a) Shall, if live insects are observed:
    - (i) Check box B(1); and
    - (ii) List the types of insects observed; and
    - (iii) State the specific location (including by way of example but not limited to sill plates, foundations, etc.) where the insects are observed;
  - (b) Shall, if dead insects, insect parts, frass, shelter tubes, exit holes, staining or other physical evidence are observed:
    - (i) Check box B(2); and
    - (ii) Describe the type of insects and insect parts observed, and describe all other physical indicators observed, including but not limited to frass, shelter tubes, exit holes and staining; and

(iii) State the specific location (including by way of example but not limited to sill plates, foundations, etc.) where the dead insects, insect parts, frass, shelter tubes, exit holes, staining or other physical indicators are observed.

(c) Shall, if visible insect damage to the structure was observed:

(i) Check box 3; and

(ii) Describe the type of damage observed; and

(iii) State the specific locations (including by way of example but not limited to sill plates, foundations, etc.) where damage is observed; and

(3) Checking “yes” or “no” in response to the question of whether evidence of previous treatment was observed. If evidence of previous treatment (including but not limited to drill marks, bait stations, dyed wood from borate treatments, dusted carpenter bee holes, etc.) is observed, or documentation of previous treatment was supplied to the inspector prior to the inspection, the commercial applicator conducting the inspection shall check yes and:

(a) Describe the evidence of previous treatment; and

(b) State the specific location (including by way of example but not limited to sill plates, foundation, etc.) where the evidence of previous treatment is observed or documented; and

(c) Attach to the form a copy of all documentation supplied.

This box shall be checked regardless of whether box A or box B in section two of the form is checked.

If the comments to be noted in this section of the form exceed the space provided, the commercial applicator conducting the inspection shall attach supplemental pages to the form, and state in section five of the form that additional pages are attached to the form.

(E) In section three of the form, shall check one box in accordance with the following:

(1) Shall check the box indicating “no treatment recommended” if box A in section two of the form is checked; or

(2) May check the box indicating that treatment is recommended if box B in section two of the form is checked; and

(a) There is evidence of active insect infestation; or

(b) There is:

(i) No evidence of previous treatment; or

(ii) Evidence of insect activity that appears to have occurred after the most recent treatment; or

(iii) Evidence of subterranean termites; and

(a) The structure is not currently under a termite treatment service contract or warranty; and



(b) The structure has not been treated with a liquid soil termite treatment within the previous five years; and

(c) The commercial applicator conducting the inspection describes the evidence relied upon in making the determination that treatment is recommended.

(3) May check the box indicating that no treatment is recommended if:

(a) Box B in section two of the form is checked; and

(b) The commercial applicator conducting the inspection:

(i) Believes, based on the evidence observed, that there is not an active insect infestation; and

(ii) Describes the evidence relied upon in making the determination that treatment is not recommended.

(F) Designate by checkmark in section four of the form any obstructed or inaccessible area of the specific structure inspected. Access coverings which are readily removed using commonly available tools such as screwdrivers, pliers and wrenches do not render an area obstructed or inaccessible.

(G) Include in section five of the form:

(1) Any comments which are not provided for in the other sections of the form, including but not limited to infestation or damage observed in areas other than the specific structure inspected; and

(2) Any comments amplifying information provided in other sections of the form; and

(3) If attachments were used to detail inspection findings described in other sections of the form, a list and description of these attachments.

(H) Complete and sign the form within five business days following completion of the inspection. The commercial applicator's signature on the form is the commercial applicator's certification that the inspection was conducted and reported in accordance with the requirements of Chapter 901:5-11 of the Administrative Code.

(I) Submit, within ten days following completion of the inspection, a copy of the completed and signed form to the pesticide business or registered location from which the inspection was conducted.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.14

Prior Effective Dates: 11/1/17, 2/1/94, 10/29/98, 10/1/01, 11/11/02, 1/18/05, 5/19/2005

**901:5-11-14 Integrated pest management standard.**

(A) This rule shall apply to persons involved in developing and implementing integrated pest management (IPM) activities for non-agricultural uses in this state. This includes pesticide businesses, school personnel, or any other individuals conducting IPM activities. In order to be considered an IPM activity under this rule, the activity shall include the elements set out in paragraph (B) of this rule.

(B) Persons developing and implementing IPM activities shall do all of the following:

(1) Conduct a comprehensive site assessment of the property for which the IPM activity is being developed. This assessment shall identify the:

- (a) Structural, mechanical, storage or sanitation conditions that are producing or could produce pest problems, including pest entry points and areas prone to pest harborage;
- (b) Type and extent of pest activity; which may be determined by using monitoring devices when practical; and
- (c) Potential impacts presented by the pests to humans, domestic animals and environment .

(2) Determine with the entity contracting for service:

- (a) Structural, mechanical, storage, or sanitation-related measures that will aid in long-term prevention, elimination or control of pests;
- (b) Priorities for pest control and elimination;
- (c) Whether chemical control is necessary to prevent, eliminate, or control pests; and
- (d) The most effective measures, application products, and methods that will result in control of pests while minimizing exposure to humans, domestic animals and the environment .

(3) Establish with the entity contracting for service a strategy, schedule, and specific recommendations for ongoing site monitoring and assessment to resolve short term and long-term control or elimination of pest problems consistent with this paragraph .

(4) Evaluate the results of implementing the IPM activity in accordance with a time frame agreed to with the entity contracting for service. The evaluation shall include a re-assessment of the site and consider whether:

- (a) Correction of structural, mechanical, storage, or sanitation problems was completed and effective;
- (b) Methods used to prevent, control, and eliminate pests at the site were effective;
- (c) Risks of exposure to humans, domestic animals, and the environment were sufficiently minimized; and
- (d) Other measures, products, or methods should be chosen for future pest management and control.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03  
Statutory Authority: 921.18  
Rule Amplifies: 921.01, 921.18  
Prior Effective Dates: 8/10/2009

**901:5-11-15 Pesticide use in schools.**

(A) This rule shall apply to the following:

- (1) School classroom buildings established under Chapter 3311. of the Revised Code;
- (2) Education service centers and community schools established under Chapter 3314. of the Revised Code;
- (3) STEM schools established under Chapter 3326. of the Revised Code; and
- (4) Non-public schools chartered by the board of education pursuant to section 3301.16 of the Revised Code.

(B) Pesticides shall be applied on or in the classroom buildings of schools only if:

(1) The pesticide is applied:

- (a) At a time after the school day has concluded;
- (b) When school is not in session; or
- (c) Either a period of four hours or the minimum time specified by the pesticide product's label applied prior to the beginning of the school day, whichever is longer.

(2) The pesticide is applied when school is in session provided that:

- (a) Persons other than pesticide applicators and necessary school staff are not scheduled to be in the treatment area during treatment and for either the longer of four hours or the minimum time specified by the label of the pesticide applied, if any is specified, as measured from the time that the pesticide application is completed; and
- b) The entrances to the area in which the pesticide is applied are posted with signs meeting the following requirements:
  - (i) The sign shall measure at least eight and one half inches by eleven inches; and
  - (ii) The sign is printed with letters at least one inch in height with the following wording: "Pesticide Treatment Area. Do Not Enter Before (the date and time where re-entry will be permitted into the treatment area)." The time shall be the later of four hours or the minimum time specified on the label, as measured from the time that the pesticide application is completed.

(3) The pesticide applied is one of the following, and is applied in strict accordance with label instructions:

- (a) Manufactured paste or gel baits;
- (b) Paraffin-based rodent control products placed in industry-identified tamper-resistant bait stations;
- (c) Termite-baiting stations;
- (d) Rodenticides which are placed in wall voids or other areas that are inaccessible to humans and domestic animals;
- (e) Disinfectants, sanitizers, germicides, and anti-microbial agents; or
- (f) Dusts used in unoccupied areas of the structure.

(4) If one of the conditions in paragraph (B) of this rule has been met, except for those items listed in paragraph (B)(3)(e) of this rule, the following information shall be provided to the school's contact person identified under paragraph (C)(2) of this rule as soon as practicable following the application:

- (a) Date and time that the pesticide was applied;
- (b) Treatment area;
- (c) Target pests;
- (d) Brand name and EPA registration number of the pesticide applied; and
- (e) If applied under paragraph (B)(2) of this rule, time or conditions for re-entering the treatment area as specified by the label of the pesticide applied, if any is specified.

(C) Any school subject to this rule shall:

(1) Develop a policy whereby parents or guardians of minor children, adult students, faculty and staff who are enrolled or employed at the school may request and receive prior notifications of scheduled service visits by pesticide businesses in which pesticides may be applied under paragraph (B)(2) of this rule or scheduled pesticide applications under paragraph (B)(2) of this rule by licensed school employees pursuant to section 921.06 of the Revised Code.

- (a) The method of prior notifications shall be determined by the school and may include but shall not be limited to e-mail and listserv methods; and
- (b) If special circumstances arise that prevent prior notification from being provided as required, such as emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide notice as soon as possible. The notice shall explain the reasons why advance notice was not provided.

(2) Designate a school employee to serve as a contact person for pesticide applications made at the school. The school shall maintain for inspection during normal school hours by parents or guardians of minor children, adult students, faculty and staff who are enrolled or employed at the school, or the director or their authorized representative:

- (a) Records provided to the contact person pursuant to paragraph (B)(4) of this rule. The records shall be maintained for a period of one year following the date of the pesticide application; and

(b) Documentation that requested notifications were made pursuant to the school policy established under paragraph (C)(1) of this rule.

(3) Pesticides applied under paragraph (B)(3)(e) of this rule are excepted from the notification policy contained in paragraphs (C)(1) and (C)(2) of this rule.

(D) Guidance for principles of integrated pest management may be published on the department's website or otherwise disseminated as determined by the director.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.01, 921.18

Prior Effective Dates: 8/10/09, 4/26/2010

#### **901:5-11-19 Pesticide safety for agricultural workers and handlers.**

(A) The department of agriculture adopts the Agricultural Worker Protection Standard found in 40 C.F.R. 170 (1992), as the pesticide safety standard for Ohio.

(B) The standard applies to all agricultural workers and handlers working with, in, or around pesticides, as defined in the Agricultural Worker Protection Standard.

(C) Any exemptions or exceptions found in the Agricultural Worker Protection Standard apply to this rule.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.16

Prior Effective Dates: 8/12/2010

#### **901:5-11-99 Civil penalties.**

(A) A civil penalty may be assessed for each violation of sections 921.01 to 921.29 of the Revised Code, any rule adopted, and any order issued under authority of these sections. The amount of the penalty shall be based on the following criteria:

(1) The cost to the department of agriculture to investigate the violation. Calculation of the cost shall include:

(a) The average salary of all state employees directly involved in pesticide use investigations with the rate being that amount charged to other agencies for grant supported activities;

(b) Fringe benefits for all state employees directly involved in the investigation;

(c) Indirect costs for hours shown in paragraph (A)(1)(a) of this rule with the rate being that amount charged to other agencies for grant supported activities;

(d) Duplicating and copying costs; and

(e) Direct and indirect costs of all laboratory analysis.

(2) When a violation results in material damage to the environment or harm to a human being, an additional civil penalty not to exceed two times the amount calculated under paragraph (A)(1) of this rule may be assessed in addition to the amount under paragraph (A)(1) of this rule.

(B) In no event shall the civil penalty assessed under paragraphs (A)(1) and (A)(2) of this rule exceed in the aggregate five thousand dollars for a first offense or ten thousand dollars for a second offense.

(C) All monies collected from civil penalties shall be deposited in the pesticide program fund of the state treasury.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.16, 921.22, 921.25

Prior Effective Dates: 6/30/1992, 7/1/2004, 1/18/05

<b>Wood Destroying Insect Inspection Report</b>		
<b>Notice:</b> Please read important consumer information on page 2.		
<b>Section I. General Information</b> Inspection Company, Address & Phone	Company's Business Lic. No.	Date of Inspection
Address of Property Inspected		
Inspector's Name, Signature & Certification, Registration, or Lic. #		Structure(s) Inspected
<b>Section II. Inspection Findings</b> This report is indicative of the condition of the above identified structure(s) on the date of inspection and is not to be construed as a guarantee or warranty against latent, concealed, or future infestations or defects. <b>Based on a careful visual inspection of the readily accessible areas of the structure(s) inspected:</b>		
<input type="checkbox"/> <b>A. No visible</b> evidence of wood destroying insects was observed. <input type="checkbox"/> <b>B. Visible</b> evidence of wood destroying insects was observed as follows:		
<input type="checkbox"/> 1. Live insects (description and location): _____ _____		
<input type="checkbox"/> 2. Dead insects, insect parts, frass, shelter tubes, exit holes, or staining (description and location): _____ _____		
<input type="checkbox"/> 3. Visible damage from wood destroying insects was noted as follows (description and location): _____ _____		
<b>NOTE: This is not a structural damage report. If box B above is checked, it should be understood that some degree of damage, including hidden damage, may be present.</b> If any questions arise regarding damage indicated by this report, it is recommended that the buyer or any interested parties contact a qualified structural professional to determine the extent of damage and the need for repairs.		
Yes <input type="checkbox"/> No <input type="checkbox"/> It appears that the structure(s) or a portion thereof may have been previously treated. Visible evidence of possible previous treatment: _____		
The inspecting company can give no assurances with regard to work done by other companies. The company that performed the treatment should be contacted for information on treatment and any warranty or service agreement which may be in place.		
<b>Section III. Recommendations</b> <input type="checkbox"/> No treatment recommended: (Explain if Box B in Section II is checked) _____ <input type="checkbox"/> Recommend treatment for the control of: _____		
<b>Section IV. Obstructions and Inaccessible Areas</b> The following areas of the structure(s) inspected were obstructed or inaccessible:		
<input type="checkbox"/> Basement <input type="checkbox"/> Crawlspace <input type="checkbox"/> Main Level <input type="checkbox"/> Attic <input type="checkbox"/> Garage <input type="checkbox"/> Exterior <input type="checkbox"/> Porch <input type="checkbox"/> Addition <input type="checkbox"/> Other	<b>The inspector may write out obstructions or use the following optional key:</b> 1. Fixed ceiling      13. Only visual access 2. Suspended ceiling      14. Cluttered condition 3. Fixed wall covering      15. Standing water 4. Floor covering      16. Dense vegetation 5. Insulation      17. Exterior siding 6. Cabinets or shelving      18. Window well covers 7. Stored items      19. Wood pile 8. Furnishings      20. Snow 9. Appliances      21. Unsafe conditions 10. No access or entry      22. Rigid foam board 11. Limited access      23. Synthetic stucco 12. No access beneath      24. Duct work, plumbing, and/or wiring	
<b>Section V. Additional Comments and Attachments</b> (these are an integral part of the report) _____ _____ _____ Attachments _____		
<b>Signature of Seller(s)</b> or Owner(s) if refinancing. Seller acknowledges that all information regarding W.D.I. infestation, damage, repair, and treatment history has been disclosed to the buyer.  X	<b>Signature of Buyer.</b> The undersigned hereby acknowledges receipt of a copy of both page 1 and page 2 of this report and understands the information reported.  X	