

STATE OF DELAWARE CODE

**TITLE 3, PART II
CHAPTER 12**

PESTICIDE LAW

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CHAPTER 12. PESTICIDES

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CHAPTER 12. PESTICIDES
SUBCHAPTER 1. GENERAL PROVISIONS

§ 1201. Declaration of purpose.

The purposes of this chapter are:

- (1) To regulate the sale, use and application of pesticides in the interest of the overall public welfare;
- (2) To protect the consumer by requiring that pesticides sold in this State be correctly labeled with warnings and adequate directions for use; and
- (3) To restrict the use of any pesticides which are found to be so hazardous to man or to his environment that restrictions are necessary in the overall public interest, weighing the benefits and the risks of that use.

§ 1202. Definitions.

For the purposes of this chapter:

- (1) "Active ingredient" means:
 - a. In the case of pesticides other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate insects, mites, nematodes, fungi, rodents, weeds or other pests;
 - b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;
 - c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from the plant; or
 - d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.
- (2) "Adulterated" shall apply to any pesticide if its strength or purity falls below the standard of quality expressed on labeling under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

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

(4) "Applicators":

- a. "Certified applicator" means any individual who is certified under this chapter to use or supervise the use of any pesticide which is classified for restricted use.
- b. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.
- c. "Commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph b. of this subdivision. The Secretary may by regulation declare certain types of applicators, who use or supervise the use of any pesticide on property owned or rented by the applicator or the applicator's employer, to be commercial applicators.
- d. "Under the direct supervision of a certified applicator" means unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(5) "Committee" means the Pesticide Advisory Committee.

(6) "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.

(7) "Department" means the Department of Agriculture of the State.

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

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

(10) "Distributed" means to offer for sale, hold for sale, sell, barter or supply pesticides or devices within this State.

(11) "Environment" includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

(12) "E.P.A." means the United States Environmental Protection Agency.

(13) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. § 136 et seq.].

(14) "Fungus" means any nonchlorophyll-bearing thallophytes (that 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 man or other animals, and except those on or in processed food, beverages or pharmaceuticals.

(15) "Ingredient statement" means a statement which contains:

- a. The name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and
- b. If the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

(16) "Inert ingredient" means an ingredient which is not an active ingredient.

(17) "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, comprising 6-legged, usually winged forms, as for example, beetles, bugs, bees, flies and to other allied classes of arthropods whose members are wingless and usually have more than 6 legs, as for example, spiders, mites, ticks, centipedes and wood lice.

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

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

- a. Accompanying the pesticide or device at any time; or
- b. To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the E.P.A., the United States Departments of Agriculture and Interior, the Department of Health, Education and Welfare, state experiment stations, state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(20) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(21) "License" is written permission issued by the Department to engage in the business of applying any pesticides to the lands of another.

(22) "Misbranded" shall apply:

- a. To any pesticide or its container if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- b. To any pesticide:
 1. If it is an imitation of or is offered for sale under the name of another pesticide;

2. If its labeling bears any reference to registration under this chapter and such pesticide has not been registered pursuant to this chapter;

3. If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, together with any requirements imposed under § 3(d) of FIFRA [7 U.S.C. § 136a(d)], are adequate to protect health and the environment;

4. If the label does not contain a warning or caution statement which may be necessary, and if complied with, adequate to prevent injury to living man and other vertebrate animals;

5. If the label or container of the product does not bear an ingredient statement that may be clearly read and understood when the unit for sale is displayed under customary conditions of purchase, handling, storage and use; or

6. If any word, statement or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matters 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;

c. To any device or its container if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

(23) "Nematode" includes invertebrate animals of the phylum Nematelminthes and class Nematoda, that is, unsegmented roundworms with elongated, fusiform or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be referred to as nemas or eelworms.

(24) "Permit" means a written certificate, issued by the Department, authorizing the purchase, possession and/or use of certain pesticides which are to be used for purposes designated as "state restricted pesticide uses" or for experimental use.

(25) "Person" means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether incorporated or not.

(26) "Pest" means:

- a. Any insect, rodent, nematode, fungus, weed; or
- b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria or other microorganisms on or in living man or other living animals) which is declared to be a pest under regulations pursuant to § 1203(f) of this title.

(27) "Pesticide" means:

- a. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; or
- b. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

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

(29) "Registrant" means the person who has registered any pesticide pursuant to this chapter.

(30) "Restricted use pesticide" means any pesticide or pesticide use classified by the Administrator of E.P.A. for use only by a certified applicator or competent individual under the direct supervision of a certified applicator.

(31) "State restricted pesticide use" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the Department determines,

subsequent to a hearing, requires additional restrictions to prevent unreasonable adverse effects on the environment.

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

(33) "Weed" means any plant which grows where not wanted.

(34) "Wildlife" means all living things that are neither human, domesticated nor, as defined in this chapter, pests, including but not limited to, mammals, birds and aquatic life.

(35) "Secretary" means the Secretary of the Department of Agriculture of the State or his duly authorized designee.

(36) "Dealer permit" means a written certificate, issued by the Department, authorizing the sale of restricted use pesticides and/or state restricted use pesticides.

SUBCHAPTER II.

REGULATION OF SALE AND USE OF PESTICIDES AND DEVICES

§ 1203. Regulation; duties and powers of Department.

(a) In order to regulate the sale and/or use of pesticides and devices in this State, the Department shall, by regulation, provide that every pesticide and device distributed and/or used within this State shall be duly registered with the Department. The Department shall require a biennial registration fee, not to exceed \$70, for each pesticide or device registered.

(b) Any regulation adopted by the Department pursuant to its authority under § 1237 of this title may prescribe the methods to be used in application of pesticides, and may relate to the time, place, manner, materials and amounts and concentrations, in connection with the application of the pesticides, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the

Department deems necessary to prevent damage or injury by drift or misapplication to:

- (1) Plants, including forage plants, or adjacent or nearby lands;
- (2) Wildlife in the adjoining or nearby areas;
- (3) Fish and other aquatic life in waters in reasonable proximity to the areas to be treated; or
- (4) Humans, animals or beneficial insects.

(c) The Department may also, by regulation, after a public hearing following due notice, determine "state restricted pesticide uses" for the State or for designated areas within the State, and may require a permit for purchase, possession and application of a pesticide labeled for a use which is designated as a "state restricted pesticide use."

(d) In issuing such regulations, the Department shall give consideration to pertinent research findings and recommendations of other agencies of the State, the federal government or other reliable sources.

(e) The Department shall adopt "restricted use pesticide" classifications. For the purpose of uniformity and in order to enter into cooperative agreements, these classifications shall conform to all current and future classifications adopted by E.P.A.

(f) The Department, after notice and hearing, and in agreement with the Department of Natural Resources and Environmental Control of the State, is authorized to declare a pest any form of plant or animal life (other than man and other than bacteria, virus and other microorganisms on or in living man or other living animals) which is injurious to health or the environment.

(g) In order to comply with § 4 of FIFRA [7 U.S.C. § 136(a)-(c)], the Department is authorized to make such reports to the E.P.A. in such form and containing such information as E.P.A. may from time to time require.

(h) The Department is authorized, by regulation, to determine standards of coloring or discoloring for pesticides.

(i) The Secretary shall have the power to issue an order to any person violating any rule, regulation or order, or provision under this chapter to cease and desist from such violation; provided that any cease and desist order issued pursuant to this section shall expire:

- (1) After 30 days of its issuance; or
- (2) Upon withdrawal of said order by the Secretary; or
- (3) When the order is superseded by an injunction, whichever occurs first.

§ 1204. Registration of pesticides which do not have E.P.A. registration for intended use.

(a) This section shall become effective upon certification of the State by the Administrator of E.P.A. pursuant to § 24(c) of FIFRA [7 U.S.C. § 136v].

(b) Every pesticide which does not have E.P.A. registration for the use intended and which is formulated for distribution and use within this State shall be duly registered with the Department in accordance with this section.

(c) Any application for the registration of a pesticide under this section shall be filed with the Department and include the information set forth pursuant to the regulations adopted under § 1203 of this title. The Department may register such pesticide if it determines that:

- (1) Its composition is such as to warrant the proposed claim for it;
- (2) Its labeling and other material required to be submitted comply with the requirements of this chapter;
- (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 upon the environment;
- (5) The classification for general or restricted use is in conformity with § 3(d) of FIFRA [7 U.S.C. § 136a(d)]; and

provided, that the Department shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where 2 pesticides meet the requirements of this paragraph, 1 should not be registered in preference to the other; or

- (6) Special local needs exist.

§ 1205. Revocation or suspension of registration.

(a) The Department may, after due notice, including notice to the registrant and opportunity for a hearing, revoke the registration of a pesticide registered pursuant to this chapter if the pesticide or its labeling does not comply with the requirements of this chapter or the regulations promulgated by the Department, or to prevent unreasonable adverse effects on the environment. A person affected by such revocation may request a hearing before the Department. A hearing shall be held within 30 days after request. Within 30 days after the hearing, the Department shall affirm, withdraw or modify its action by an order based upon the record of the hearing. An appeal from that order may be taken to the Superior Court within 30 days of the date of the order.

(b) The Department may suspend the registration of any pesticide pending the completion of revocation proceedings if the continued use of a pesticide during the time required for revocation proceedings would be likely to result in unreasonable adverse effects on the environment. A revocation order shall be issued with the suspension order so that the hearing procedure may be initiated as provided in cases of revocation of registration. If no request for a hearing is made within 30 days of the suspension order, the revocation order will be effective and the registration is revoked.

§ 1206. Licensing - Required; classification.

(a) No person shall engage in the business of applying pesticides to the lands or personal property of another unless such person has been duly licensed by the Department. Further, no license shall be issued to any person, nor shall it remain valid, unless such person is certified or has a certified applicator in his employ at all times. At least one person designated as a certified applicator

under the license shall meet the experience requirement specified in Section 1207(c) of this Title. No license shall be required of any private applicator.

(b) The Department shall classify or subclassify licenses to be issued under this chapter. Such classifications may include, but not be limited to, pest control operators, ornamental, agricultural or right-of-way pesticide applicators. Separate subclassifications may be specified as to ground, aerial or manual methods used by any licensee to apply pesticides or to the use of pesticides to control pests (provided, that no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the Department under the authority of this Chapter).

§ 1207. Same - Procedure.

(a) Application for a license shall be made in writing to the Department on a designated form obtained from the Department.

(b) The Department shall require a fee of \$50 for an annual license or \$100 for a biennial license.

(c) The Department shall issue a license limited to the classifications of pesticide use for which an applicant is qualified. To qualify for a license, the following conditions shall be met:

- (1) The applicant must provide evidence that at least one applicator in his or her employ is certified to apply pesticides in the classification(s) of pest control for which he or she is applying. At least one of these certified applicators must have a minimum of two years practical experience under the supervision of a certified applicator. This experience shall have been acquired during the previous three year period, and shall be related to the license classification at issue.
- (2) The applicant files the proper proof of financial responsibility as required under Section 1208(a) of this Title.

- (3) If the applicant is applying for a license to engage in the aerial application of pesticides, he or she shall have met all requirements of the Federal Aviation Administration and any other applicable federal or state laws or regulations to operate the equipment described in the application.

(c) The Department may limit the license to the applicant to the use of certain pesticides, or to certain areas or to certain types of equipment if the applicant is only so qualified. If a license is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

(d) If the application for renewal of any license provided for in this chapter is not filed prior to the 1st day of January in any year, a penalty of 20 percent of the yearly fee shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal license shall be issued.

§ 1208. Same - Denial of license.

(a) The Department shall refuse to grant a license until the applicant has furnished evidence of financial responsibility with the Department consisting either of a surety bond or a liability insurance policy or certification thereof, or other evidence of financial responsibility acceptable to the Department within the financial capabilities of the industries involved. The Department may determine the insurance and surety requirements after due notice and a hearing.

(b) The Department may refuse to grant a license to any person who has committed any unlawful acts pursuant to § 1224 of this title.

§ 1209. Same - Suspension; modification; revocation.

(a) The Department may, after notice and opportunity for a hearing, suspend or modify any license granted under this chapter, where the Department has reasonable grounds to believe that the licensee is responsible for any unlawful acts pursuant to § 1224 of

this title. The Department shall furnish the licensee with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directed to his place of business or last known address with postage fully paid within 10 days prior to the time fixed for the hearing.

(b) (1) The Department may, after notice and opportunity for hearing, revoke any license granted under this chapter if the licensee has been found guilty of any unlawful act under this chapter.

(2) Should the surety furnished become unsatisfactory, said licensee shall, upon notice, immediately execute a new bond, insurance or other financial responsibility and shall he fail to do so, the Department shall revoke his license and give him notice of said fact.

(3) Should the licensee no longer employ a certified applicator with two years practical experience, the department shall revoke his license and give him notice of said fact.

§ 1210. Same - Renewal of license.

All licenses shall continue in effect until December 31st of the year in which the license expires whereupon they shall become invalid unless renewed, except that a license for which a renewal application has been submitted to the Department by November 30th shall remain in full force and effect until such time as the Department gives written notice to the license holder of renewal or denial. Forms for renewal shall be mailed to all holders of current licenses by the Department by October 1st of each year in which they expire.

§ 1211. Exemption.

This subchapter, relating to licenses and requirements for their issuance, shall not apply to research personnel applying to bona fide experimental plots. By regulation, the Department may exempt certain license applicants from the experience requirements specified in §1207(c) of this Title. Exemptions from the §1207(c)

requirements shall include, but not be limited to, persons applying pesticides to turf or ornamental plants.

§ 1212. Registration of noncertified individuals; fee.

(a) The Department shall by regulation provide a program of registering noncertified individuals in the employ of licensees.

(b) The Department shall by regulation charge a fee not to exceed \$25 for the registration of noncertified individuals in the employ of licensees.

(c) The employee registration fee shall not be required of a certified commercial applicator, provided that the applicator's certificate is valid.

§ 1213. Nonresidents; service of process.

Any nonresident applying for a license under this chapter shall appoint and constitute the Secretary of State of this State his agent for the acceptance of legal process in any civil action against him. Any such process when so served shall be of the same legal force and validity as if served upon such nonresident personally within the State. Such appointment shall be irrevocable and binding on his executor or administrator; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the Secretary of State as such agent. The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents. The Department shall be furnished with a copy of such designation of the Secretary of State or of a resident agent, such copy to be duly certified by the Secretary of State.

§ 1214. Permits.

(a) The Department shall require that:

(1) No person may use a pesticide designated as a "state restricted use pesticide" until that person has a permit duly issued by the Department; and

(2) No person may sell a "restricted use pesticide" or a "state restricted use pesticide" unless that person has a dealer permit.

(b) Applications for permits shall be made to the Department on forms prepared by it. The Department shall grant a permit to purchase and/or use a pesticide designated for use as a "state restricted pesticide use" subject to such restrictions as it finds necessary in each case to protect the overall public interest and welfare. The permit may specify the area, time, amount or rate of application or such other conditions of use as the Department finds necessary to carry out the purposes of this chapter. Permits shall be issued on an annual basis.

(c) The Department shall promulgate such rules, regulations and fees necessary to carry into effect this section and to alter or uniformly suspend such rules, regulations and fees when necessary. Prior to the promulgation of any rules, regulations and fees, the Department shall hold public hearings following due notice. The hearings shall be conducted by the Department for the purpose of receiving evidence relevant and material to the issues, following the conclusion of which the Department shall issue such rules, regulations and fees as it sees fit, based on the evidence received at such hearings. An appeal from that order may be taken to the Superior Court within 30 days of the date of the order.

(d) The Department may require a permit fee.

(e) Provided the State is authorized by the Administrator of E.P.A. to issue experimental use permits, the Department may:

(1) Issue an experimental use permit to any person applying for an experimental use permit if it determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under § 1204 of this title. An application for an experimental use permit may be filed at the time of, or before or after an application for registration is filed;

(2) Prescribe terms, conditions and periods of time for the experimental use permit which shall be under the supervision of the Department; and

(3) Revoke or modify any experimental use permit, at any time, if it 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.

(f) All permits, except experimental use permits, shall continue in full force and effect until December 31st of each year whereupon they shall become invalid unless renewed, except that a permit for which a renewal application has been submitted to the Department by December 31st shall remain in full force and effect until such time as the Department gives written notice to the permit holder of renewal or denial. Forms for renewal shall be mailed to all holders of current permits by the Department by October 1st of each year.

(g) (1) The Department may deny a permit to any person if it finds after a hearing that the public interest requires such denial.

(2) The Department may revoke a permit, after due notice to the permit holder and opportunity for hearing, if it finds that the permit holder has violated this chapter, or if an emergency creates a clear and present danger to the overall public interest and welfare from the uses authorized by the permit.

(3) A person whose permit is denied or revoked may request a hearing before the Department. A hearing shall be held within 30 days after request. Within 30 days after the hearing, the Department shall affirm, withdraw or modify its action by an order based upon the record of the hearing. An appeal from that order may be taken to the Superior Court within 30 days of the date of the order.

SUBCHAPTER III CERTIFICATION OF APPLICATORS

§ 1215. Applicability of subchapter.

This subchapter shall become applicable upon approval by the Administrator of E.P.A. of the state plan submitted by the Governor pursuant to § 4(a)(2) of FIFRA [7 U.S.C. § 136i(a)(2)].

§ 1216. Certification - Required.

In order to prevent unreasonable adverse effects on the environment, including injury to users of pesticides and others, no individual shall use any restricted use pesticide unless such individual has either been duly certified by the Department or is under the direct supervision of a certified applicator. An applicant for certification must be at least 18 years of age.

§ 1217. Same - Standards; classifications.

(a) The Department in promulgating regulations under this chapter shall prescribe standards for the certification of applicators of pesticides. Such standards shall relate to the use and handling of pesticides, or to the use and handling of the pesticides or class of pesticides covered by the individual's certification, and shall be relative to the hazards involved. In determining standards, the Department shall consider the characteristics of the pesticide formulation such as: The acute mammalian toxicity; the persistence, mobility and susceptibility to biological concentration; the use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information; the relative hazards of patterns of use such as granular soil applications, ultra low volume or aerial dust applications, or air blast sprayer applications; and the extent of the intended use. Further, the Department shall adopt by regulation the certification standards of the E.P.A.

(b) The Department shall classify or subclassify certifications to be issued under this chapter. Such classifications shall include commercial applicators and private applicators, and classifications and subclassifications may include, but not be limited to, pest control operators, ornamental, agricultural or right-of-way pesticide applicators. Separate subclassifications may be specified as to ground, aerial or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents or weeds. Each classification shall be subject to separate examination procedures and requirements.

§ 1218. Same - Procedure.

(a) The Department, by regulation, shall provide for a certification procedure. Such procedure shall consist, in part, of an application and examination, except that the examination requirement may be waived in part or whole by the Department on a reciprocal basis with any other state which has substantially the same standards.

(b) The Department shall by regulation require an annual certification fee for commercial applicators.

§ 1219. Same - Renewal of certification.

An applicator's certification shall automatically renew under the classification or subclassification for which such applicator is certified; provided, however, reexamination may be required by the Department:

(1) Of any applicator whose certification, license or permit has been suspended, revoked or modified;

(2) At any time if significant technological developments have occurred to require additional knowledge related to the classifications or subclassifications for which the applicator has been certified, and to assure a continuing level of competence and ability to use pesticides safely and properly; or

(3) When required by additional standards established by the E.P.A. Such reexamination or special examination requirements may be waived by the Department when the applicator can furnish satisfactory evidence of completion of educational courses, programs or seminars approved by the Department relating to the applicator's certification.

§ 1220. Same - Denial; revocation; suspension; modification.

(a) If the applicant is not certified under this subchapter, the Department shall notify such applicant, in writing, of the reasons therefor.

(b) The Department, after due notice and opportunity for hearing, may suspend, revoke or modify any provision of any certification, including reciprocal certification, issued under this

subchapter if the Department finds that the certified applicator or any individual acting under the direct supervision of such certified applicator has committed any acts declared by this chapter to be unlawful, or the certified applicator has been convicted or is subject to a final order imposing a civil penalty under § 14 of FIFRA [7 U.S.C. § 1361].

(c) The Department shall deny the issuance of a certification to any person working under the direction or employment of an applicator whose certification has been suspended, revoked or modified. Such denial shall continue in effect until the term of the Department's final order has expired.

§ 1221. Hearing procedure.

All hearings which are held for the suspension, modification or revocation of license, permit or certification shall be conducted by the Secretary. The licensee, permit holder or certified applicator shall have the right to appear personally, and to be represented by counsel, and to produce evidence and witnesses in his own behalf. The Department shall preserve a full record of the proceeding. A transcript of the record may be purchased by any person interested in such hearing on payment to the Department the cost of preparing such transcript. The Department shall notify the licensee, permit holder or certified applicator of its decision in writing within 30 days after the conclusion of the hearing.

§ 1222. Appeals.

Any licensee, permit holder or certified applicator who feels aggrieved by an action of the Department in denying, suspending, modifying or revoking his license, permit or certification may take an appeal, within 30 days of such action, to the Superior Court, and after full hearing the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds therefor, shall be served upon the Secretary of the Department.

§ 1223. Reinstatement.

Upon denial, suspension, modification or revocation of a license, permit or certification, any person may reapply to the Department after a time period set by the Department not to exceed one (1) year.

SUBCHAPTER IV.

UNLAWFUL ACTS; PENALTIES; JURISDICTION

§ 1224. Unlawful acts; criminal penalties; jurisdiction.

(a) The following acts shall constitute a class A misdemeanor:

(1) Making a pesticide recommendation or use or application inconsistent with the labeling, the E.P.A., or state registration for the pesticide, or in violation of the E.P.A., or state restrictions of the use of that pesticide; except that the first offense shall constitute a class B misdemeanor;

(2) Making false or fraudulent records, invoices or reports;

(3) Engaging in the business of applying a pesticide on the lands of another without having a license granted by the Department;

(4) Applying a restricted use pesticide without a certified applicator in direct supervision;

(5) Using fraud or misrepresentation in making an application for, or renewal of, a license, permit or certification;

(6) Aiding or abetting a licensed or an unlicensed person to evade this chapter, conspiring with such a licensed or an unlicensed person to evade this chapter or allowing one's license, permit or certification to be used by another person;

(7) Distributing, selling or offering for sale within this State any of the following:

a. Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is visibly affixed to such container a label approved by the E.P.A. or by the Department, in the case of State registration; or

b. Any pesticide which is adulterated, not branded or misbranded, or any container which is misbranded or not branded;

(8) Detaching, altering, defacing or destroying, in whole or in part, any label or labeling prior to purchase by the ultimate consumer, provided for in this chapter or regulations promulgated hereunder or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter;

(9) Using for one's own advantage or to reveal any information relative to formulas of products acquired by authority of § 1203 or 1204 of this title; or

(10) Neglecting or, after notice, refusing to comply with this chapter, the rules adopted hereunder or any lawful order of the Department.

(b) The following acts shall constitute a class B misdemeanor:

(1) The first offense of paragraph (1) of subsection (a) of this section;

(2) Refusing or neglecting to comply with any limitations or restrictions on or in a duly issued license, permit or certification;

(3) Distributing, selling or offering for sale within this State any pesticide required to be colored or discolored by the E.P.A. under § 25(c)(5) of FIFRA [7 U.S.C. § 136w(c)(5)] unless such pesticide is so colored or discolored; or

(4) The use of fraud or misrepresentation in connection with the application of pesticides.

(c) The following acts shall constitute a class C misdemeanor:

(1) Operating in a faulty, careless or negligent manner;

(2) Refusing or neglecting to keep and maintain the records required by this chapter, or to make reports when and as required;

(3) Purchasing or using a restricted use pesticide except in accordance with a duly issued certification from the Department;

(4) Selling or offering to sell a restricted use pesticide unless the purchaser is a certified applicator and is certified to use that restricted use pesticide, and that certification is valid;

(5) Purchasing or using a pesticide designated for "state restricted pesticide use" except in accordance with a permit granted by the Department;

(6) Selling or offering to sell a pesticide designated for "state restricted pesticide use" unless the purchaser has a permit for its purchase and use and that permit is valid;

(7) Engaging in the business of applying pesticides to the lands of another without financial security which is currently in compliance with the requirements of § 1208 of this title;

(8) Distributing, selling or offering for sale within this State any pesticide which has not been registered pursuant to § 1203 or 1204 of this title, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided, that in the discretion of the Department, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product; or

(9) Selling or offering to sell a "restricted use pesticide" or a "state restricted use pesticide" without a duly issued dealer permit.

(d) Justices of the Peace Courts and the Court of Common Pleas shall have concurrent jurisdiction over offenses under this chapter.

§ 1225. Civil penalties; exemptions.

(a) (1) In addition to proceeding under any other remedy available at law or in equity for a violation of this chapter or a rule or regulation adopted thereunder, or any order issued pursuant to, the Secretary may assess a civil penalty not to exceed \$2,500 upon a person other than a private applicator for each offense. In the case of a private applicator, the Secretary may assess a civil penalty not to exceed \$500 for each offense involving a violation of this chapter or a rule or regulation adopted thereunder, or any order issued pursuant thereto.

(2) No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29.

(3) In determining the amount of the penalty, the Secretary shall consider the appropriateness of such penalty to the size of the person's business, the gravity of the violation, and the person's ability to continue in business.. Whenever the Secretary finds the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Secretary may issue a warning in lieu of assessing a penalty.

(4) In cases of inability to collect such civil penalty or failure of any person to pay all, or such portion of such penalty as the Secretary may determine, the Secretary shall refer the matter to the Attorney General's Office of the State who shall recover such amount by action in the appropriate court.

(b) The penalties provided by this chapter shall not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide or device within this State, if such carrier shall, upon request, permit the Department to copy all records showing the transactions in and movement of the pesticide or device;

(2) Any person who prepares or packs any pesticide or device intended solely for export to a foreign country according to the specifications or directions of the purchasers;

(3) The manufacturer or shipper of a pesticide for experimental use only:

a. By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of pesticides; or

b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only, not to be sold," together with the manufacturer's name and address; provided, however, that if an experimental use permit has been obtained from the Department, pesticides may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

SUBCHAPTER V. INSPECTION AND SEIZURE

§ 1226. Inspection.

(a) For the purpose of carrying out this chapter, the Department may enter upon any public premises, and in the case of private premises, may enter with the written approval of the occupier of the premises, in order to:

- (1) Inspect and sample lands actually or reported to be exposed to pesticides;
- (2) Inspect storage or disposal areas;
- (3) Inspect or investigate complaints of injury to humans or land;
- (4) Sample pesticides being applied or to be applied;
- (5) Observe the use of a restricted use pesticide or state restricted pesticide use;
- (6) Inspect books and records relating to the shipment, sale or use of pesticides; or
- (7) Sample pesticides being held for sale or distribution.

(b) Should the Department be denied access to any land where such an access was sought for the purposes set forth in this chapter, it may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application issue the search warrant for the purposes requested.

§ 1227. Seizure.

(a) Any pesticide or device that is distributed within this State may be liable to seizure and forfeiture by the Department upon application to the Superior Court in and for the county wherein the pesticide in question is located:

(1) In the case of a pesticide, the court shall order forfeiture without compensation:

- a. If it is adulterated or misbranded;
- b. If it has not been registered under § 1203 or 1204 of this title;

c. If it fails to bear on its label the information required by this chapter; or

d. If it is a white powder pesticide and is not colored as required under this chapter.

(2) In the case of a device, if it is misbranded.

(b) If the pesticide or device is forfeited or condemned, it shall, after entry of decree, be disposed of by destruction or sale as the Department may direct and the proceeds, if such pesticide or device is sold, less legal costs, shall be paid to the General Fund; provided, that the pesticide or device shall not be sold contrary to this chapter; and provided further, that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the Department may direct that said pesticide or device be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(c) When a decree of condemnation or forfeiture is entered against the pesticide or device, Department costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

SUBCHAPTER VI PESTICIDE ADVISORY COMMITTEE

§ 1228. Established.

A Pesticide Advisory Committee is hereby established.

§ 1229. Composition; appointments; terms; removal; vacancies.

(a) The Pesticide Advisory Committee shall consist of four pesticide applicators residing in the State, 1 qualified to operate ground equipment, 1 qualified to operate aerial equipment, 1 qualified for turf and ornamental pest control and 1 qualified for structural pest control; 1 entomologist in public service; 1 environmental health specialist from the State Department of Health and Social Services; 1 toxicologist in public service; 1 plant pathologist in public service; 1 member from the agricultural

chemical industry; 1 member from the food processing industry; 1 producer of agricultural crops or products on which pesticides are applied or which may be affected by the application of pesticides; and 2 representatives of the Department of Natural Resources and Environmental Control - 1 who in his employment is responsible for the protection of environmental control, and 1 who in his employment is responsible for fish and wildlife protection.

(b) Such members shall be appointed by the Governor for terms of 3 years and may be appointed for successive 3-year terms at the discretion of the Governor, provided, however, that at the inception of this chapter, the current members of the Committee established by 58 Delaware Laws, Chapter 166, continue to serve until the expiration of their respective terms.

(c) The Governor may remove for cause any member of the Committee prior to the expiration of his term.

(d) Upon the death, resignation or removal for cause of any member of the Committee, the Governor shall fill such vacancy.

§ 1230. Function.

The Committee shall advise the Department on any and all problems relating to the sale, use, disposal and storage of pesticides in the State.

§ 1231. Meetings.

The Committee shall elect 1 of its members Chairman, and shall meet at such time and place as shall be specified by the Chairman, the Department or a majority of the members of the Committee.

§ 1232. Compensation.

Each member of the Committee shall be reimbursed for all proper and necessary expenses but shall receive no compensation for time spent in attending the work of the Committee.

SUBCHAPTER VII MISCELLANEOUS

§ 1233. Reports of pesticide accidents, incidents or loss.

(a) The Department may by regulation require the reporting of pesticide accidents or incidents to the Department.

(b) Any person claiming damages from a pesticide application shall have filed with the Department on a form prescribed by the Department a written statement claiming that he has been damaged. This report shall have been filed within 60 days after the date that damage occurred, except that if a growing crop is alleged to have been damaged, the report must be filed prior to the time that 25% of the damaged crop has been harvested. Such statement shall contain, but shall not be limited to, the name of the person allegedly responsible for the application of said pesticide, if known, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred and the date on which the alleged damage occurred. The Department shall prepare a form to be furnished to persons to be used in such cases and such form shall contain such other requirements as the Department may deem proper. The Department shall, upon receipt of such statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed, and furnish copies of such statements as may be requested. The Department shall inspect damages whenever possible and when it determines that the complaint has sufficient merit, it shall make such information available to the person claiming damage and to the person who is alleged to have caused the damage.

(c) The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

(d) Where damage is alleged to have occurred, the claimant shall permit the Department, the licensee and his representatives, such as bondsman or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to

permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee.

(e) 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 and regulations of the Department.

§ 1234. Licensee to keep records; duration; submission to Department.

(a) The Department shall require the licensee or certified commercial applicators to maintain records with respect to applications of pesticides. Such relevant information as the Department may deem necessary may be specified by regulation. The Department may require the licensee to maintain records related to applications of certain "state restricted pesticide uses."

(b) Such records shall be kept for a period of 2 years from the date of the application of the pesticide to which such records refer.

(c) Such records shall be made available for inspection to the Department by the licensee or certified applicator upon request in writing by the Department.

§ 1235. Storing and disposal of pesticides and pesticide containers.

No person shall transport, store or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any waterway in a way harmful to any wildlife therein. The Department may promulgate rules and regulations governing the storing and disposal of such pesticides or pesticide containers. In determining these standards, the Department shall take into consideration any regulations issued by the E.P.A.

§ 1236. Stop sale, use or removal orders.

When the Department has reasonable cause to believe a pesticide or device is being distributed or used in violation of any of

the provisions of this chapter, or any of the prescribed regulations under this chapter, it may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. The pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing by the Department or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. Any such "stop sale, use or removal" order shall remain in effect until the violation has been corrected. The owner or custodian of any such pesticide or device against whom a "stop sale, use or removal" order has been issued, may request a hearing to demonstrate that he is in compliance with this chapter or any regulations promulgated thereunder. Such hearing shall be scheduled within 15 days of the request and shall be held by the Secretary of the Department of Agriculture or his designee. The burden shall be on the owner or custodian of any such pesticide or device to show compliance. The hearing shall be conducted in accordance with the Administrative Procedures Act of the State. The decision of the Department may be appealed to Superior Court on the record.

§ 1237. Enforcement of chapter.

This chapter shall be enforced by the State Department of Agriculture. The Department may establish regulations, but only after public hearing following due notice to carry out the purposes of this chapter, and all authority vested in the Department by virtue of this chapter may with like force be executed by such employees of the Department as may be designated for said purpose. Due notice shall be given under this section at least 10 days prior to the public hearing and shall consist of publication in newspapers of general circulation, a registered letter to the Pesticide Advisory Committee and may also be sent to representatives of pesticide application trade associations.

§ 1238. Cooperative agreements.

The Department may cooperate, receive grants-in-aid and enter into agreements with any agency of the federal government, of this State or its subdivisions, or with any agency of another state, to obtain assistance in the implementation of this chapter, in order to:

- (1) Secure uniformity of regulations;
- (2) Cooperate in the enforcement of the federal pesticide control laws through the use of state and/or federal personnel and facilities and to implement cooperative enforcement programs;
- (3) Develop and administer state plans for training and for certification of certified applicators consistent with the federal standards;
- (4) Contract for training with other agencies for the purpose of training certified applicators;
- (5) Contract for monitoring pesticides for the national plan;
- (6) Prepare and submit state plans to meet federal certification standards, as provided for in § 4 of FIFRA [7 U.S.C. § 136i(a)-(c)]; or
- (7) Regulate certified applicators.

§ 1239. Information.

The Department may, in cooperation with the University of Delaware, Delaware State University, other educational institutions or trade associations, publish information and conduct short courses of instruction in the areas of knowledge required in this chapter.

§ 1240. Repeals.

Jurisdiction in all matters pertaining to the distribution, sale, use, application and transportation of pesticides and devices is by this chapter vested exclusively in the Department, and all acts and parts of acts inconsistent with this chapter, with the exception of Chapter 60 of Title 7, are hereby expressly repealed.