

AN ACT

To amend section 921.021 and, on July 1, 2004, to further amend section 921.021 and to amend sections 907.42, 921.01, 921.02, 921.06, 921.08, 921.09, 921.10, 921.11, 921.13, 921.14, 921.151, 921.16, 921.18, 921.22 to 921.27, 921.29, 921.30, and 921.99; to amend, on July 1, 2004, for the purpose of adopting new section numbers as indicated in parentheses, sections 921.021 (921.09), 921.08 (921.19), 921.09 (921.12), 921.151 (921.22), 921.22 (921.08), 921.23 (921.26), 921.24 (921.23), 921.25 (921.24), 921.26 (921.25), and 921.30 (921.31); to enact, on July 1, 2004, new section 921.30; and to repeal, on July 1, 2004, sections 921.07 and 921.12 of the Revised Code to revise the Pesticides Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 921.021 of the Revised Code be amended to read as follows:

Sec. 921.021. (A) No person shall own or operate a pesticide application business without obtaining a license for each location owned or operated by the person in the state 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.

(B) Any person who owns or operates a pesticide application 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.

(C) The person applying for a pesticide application business license shall file a statement with the director, on a form provided by the director, that shall include any information that the director determines necessary and that the director requires by rule. Each applicant shall pay a license fee of twenty dollars per year for each pesticide application business license the

applicant is required to obtain.

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

(E) The owner or operator of a pesticide application 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 application business license is subject to denial, modification, suspension, or revocation after a hearing for any violation of ~~sections 921.01 to 921.29 of the Revised Code~~, if it is determined that the owner or operator ~~ratified or knowingly or negligently permitted any officer, employee, or agent to commit the violations~~ this chapter or any rule adopted or order issued under it. The director ~~also~~ 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 ~~sections 921.02 to 921.29 of the Revised Code for any violation of those sections~~ this chapter or any rule adopted or order issued under it that is committed by the owner or operator or ~~any~~ by the owner's or operator's officer, employee, or agent. ~~For purposes of this division, an owner or operator is deemed to have ratified violations committed by any officer, employee, or agent if collectively the officers, employees, or agents commit three violations of a high or moderate level of severity in accordance with established department enforcement guidelines that relate directly to the storage, preparation, handling, distribution, or application of pesticides, or any violation involving fraud, within a twenty-four month period.~~

(F) The director may deny a pesticide application business license to any current owner, operator, officer, or agent whose pesticide application business license has been revoked within the previous thirty-six months.

(G) The director shall adopt any rules necessary to administer and enforce this section.

SECTION 2. That existing section 921.021 of the Revised Code is hereby repealed.

SECTION 3. That sections 907.42, 921.01, 921.02, 921.021, 921.06, 921.08, 921.09, 921.10, 921.11, 921.13, 921.14, 921.151, 921.16, 921.18, 921.22, 921.23, 921.24, 921.25, 921.26, 921.27, 921.29, 921.30, and 921.99 be amended, sections 921.021 (921.09), 921.08 (921.19), 921.09 (921.12), 921.151 (921.22), 921.22 (921.08), 921.23 (921.26), 921.24 (921.23),

.25 (921.24), 921.26 (921.25), and 921.30 (921.31) be amended for the purpose of adopting new section numbers as indicated in parentheses, and new section 921.30 of the Revised Code be enacted to read as follows:

Sec. 907.42. No person shall sell, distribute, or have in ~~his~~ the person's possession for sale, a poisonous seed treatment material in the state unless ~~such~~ the material meets the color standards or specifications that are established by the director of agriculture pursuant to section 907.43 of the Revised Code. Products sold and distributed as seed treatments shall conform to directions for use on labels accepted for registration under ~~sections 921.11 to 921.20, inclusive, Chapter 921,~~ of the Revised Code; and the federal "Insecticide, Fungicide and Rodenticide Act," 61 Stat. 163 (1947), 7 U.S.C.A. 135, as amended.

Sec. 921.01. As used in ~~sections 921.01 to 921.29 of the Revised Code~~ 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 ~~man~~ 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, ~~man~~ 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.

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

~~(H)~~ "Certification" means the recognition by a certifying agency that a person is competent and authorized to use or directly supervise the use of restricted use pesticides.

~~(I)~~ "Certified Pesticide applicator" means an individual who is certified by the director of agriculture to use or to directly supervise the use of restricted use pesticides in categories specified in the certification or for specific uses named in the permit a commercial applicator or a private applicator.

~~(J)~~ "Private applicator" means an individual who is ~~certified~~ licensed under section 921.11 of the Revised Code and who uses or directly supervises the use of any restricted use pesticide 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.

~~(K)~~ "Commercial applicator" means an individual who is ~~certified as a custom applicator, a custom operator, or a public operator, whether or not he is a private applicator with respect to some uses, and who uses or directly supervises the use of any pesticide, "Commercial applicator" includes an individual who provides diagnostic inspections to determine infestations of pests on property, or who offers pest control services, other than as provided by the definition of "private applicator~~ licensed under section 921.06 of the Revised Code to apply pesticides or to conduct authorized diagnostic inspections."

~~(L)~~ "Limited commercial applicator" means an individual other than a private applicator who limits his pesticide application activities including direct supervision of the use of pesticides to his own property or to that of his principal employer and who has been certified or licensed as competent by the director to apply restricted use pesticides or general use pesticides in those certain categories and in the manner specified in his certification or licensure.

~~(M)~~ "Certifying agency" means the department of agriculture or a similar agency of another state recognized as such by the United States environmental protection agency.

~~(N)~~ "Custom applicator" means any individual who applies pesticides in this state for hire, but does not include any of the following:

- ~~(1) A private applicator;~~
- ~~(2) A public applicator;~~
- ~~(3) A trained serviceman;~~
- ~~(4) Limited commercial applicator.~~

~~(O) "Custom operator" means an individual, other than a trained serviceman, who may directly supervise a trained serviceman in activities that include recommending control, handling, mixing, and applying pesticides and the disposal of waste, excess materials, or containers.~~

~~(P) "Competent" means properly qualified to perform the functions that are prescribed by the director of agriculture and under the federal act, and that are associated with pesticide application 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.~~

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

~~(R)(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.

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

~~(T)(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 ~~man~~ human beings and other than bacteria, virus, or other microorganism on or in living ~~man~~ human beings or other living animals. "Device" does not include equipment used for the application of pesticides when sold separately therefrom.

~~(U)(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 or limited commercial applicator~~, if it is applied by a trained ~~serviceman~~ serviceperson acting under the instructions and control of a ~~commercial or limited commercial applicator who is responsible for the actions of that trained serviceman and who is available when needed, even though the commercial or limited commercial applicator is not physically present at the time and place the pesticide is applied.~~

(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 ~~employee or~~ 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 ~~employee or~~ 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 ~~handling activities are~~ application is occurring. ~~Restricted use pesticide handling activities include equipment calibration, mixing, loading, application, operator safety, and disposal.~~

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

~~(W)(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.

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

~~(Y)(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 ~~man~~ human beings or other animals, or processed food, beverages, or pharmaceuticals.

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

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

~~(BB)(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.

~~(GG)~~(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.

~~(DD)~~(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.

~~(EE)~~(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.

~~(FF)~~(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.

~~(GG)~~(FF) "Licensure" includes certification as used in the federal act.

(GG) "Misbranded" applies, if the conditions of either division ~~(GG)~~(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) ~~That~~ The pesticide contains any substance or substances in quantities highly toxic to ~~man~~ 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) "Permit" means a certificate issued by the director of agriculture authorizing the purchase or use of a pesticide.~~

~~(JJ)~~ "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 ~~man~~ human beings.

~~(KK)~~(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.

~~(LL)~~(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.

~~(MM)~~(LL) "Pesticide application business" means ~~any location that is used for the purpose of engaging in the business of applying 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, but does not mean any location that is used exclusively to perform administrative or other functions not directly connected with the storage, preparation, handling, or distribution of the pesticides to be applied;

(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.

~~(NN)~~(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 ~~shall~~ does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

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

~~(PP)~~ "Public operator" means ~~an individual who himself applies, or directly supervises the application of pesticides by a trained serviceman, while acting as an employee of the United States government, a state, county, township, or municipal governmental agency, or of a park district, port authority, or sanitary district created pursuant to Chapter 1545., 4582., or 6115. of the Revised Code.~~

~~(QQ)~~(RR) "Registrant" means a person who has registered a pesticide pursuant to sections 921.01 to 921.29 of the Revised Code under this chapter.

~~(RR)~~(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 ~~certified~~ pesticide applicator or by an individual working under the direct supervision of a ~~certified~~ pesticide applicator.

~~(SS)~~(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.

~~(TT)~~(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 ~~certified~~ pesticide applicators or individuals working under their direct supervision.

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

~~(VV)~~(XX) "Trained ~~serviceman~~ serviceperson" means ~~an employee of a commercial applicator or limited commercial applicator whom the commercial applicator or limited commercial applicator has instructed in the proper use of the equipment and all pesticides with which the employee is to work~~ 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.

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

~~(XX)~~(ZZ) "Wildlife" means all living things that are neither human, domesticated, ~~nor are~~ or pests, including, but not limited to, mammals, birds, and aquatic life.

~~(YY)~~(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 ~~an~~ a business advantage over competitors who do not know or use it.

Sec. 921.02. (A) ~~Each~~ No person shall distribute a pesticide ~~that is distributed~~ within this state ~~shall be unless the pesticide is~~ registered with the director of agriculture ~~subject to sections 921.01 to 921.29 of the Revised Code 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 ~~sections 921.01 to 921.29 of the Revised Code~~ 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 ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter, may require the submission of the complete formula of any

pesticide including the active and inert ingredients.

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

(E) The director may require any other information to be submitted with an application.

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

(F) Each applicant shall pay a registration and inspection fee ~~of fifty dollars per year~~ established by rule for each product name and brand registered for the company whose name appears on the label. If an applicant files for a renewal of registration after the deadline established by rule, the applicant shall pay a penalty fee ~~of twenty-five dollars~~ established by rule for each product name and brand registered for the applicant. The penalty fee shall be added to the original fee and paid before the renewal registration is issued. In addition to any other remedy available under ~~sections 921.01 to 921.29 of the Revised Code~~ 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 twenty-five dollars~~ established by rule for each product name and brand registered for the applicant. The penalty fee shall be added to the original fee and paid before the registration is issued.

(G) Provided that the state is ~~certified~~ 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 ~~sections 921.01 to 921.29 of the Revised Code~~ 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 ~~this 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.

Sec. 921.06. (A)~~(1)~~ No individual shall ~~act as or hold oneself out to the public as being a custom applicator~~ do any of the following without having a ~~custom~~ commercial applicator license issued by the director of agriculture. ~~The individual shall obtain an additional license for each pesticide application business location for which the individual is the commercial applicator of record. Licenses:~~

(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 as defined in section 3717.01 of the Revised Code;

(ii) Retail food establishments as defined in section 3717.01 of the Revised Code;

(iii) Golf courses;

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

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

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

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

(viii) Wholesale food establishments as defined in section 3715.021 of the Revised Code;

(ix) 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 is one hundred dollars per year to be submitted with the application 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 categories 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, but the individual shall

~~pay an additional license fee for each pesticide application business location for which the individual is the commercial applicator of record.~~

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

(B) Application for a ~~custom~~ commercial applicator license shall be made on a form prescribed by the director. Each application for a license shall state the ~~license~~ 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 ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter.

(C) If the director finds that the applicant is ~~qualified~~ 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 ~~custom~~ commercial applicator license limited to the pesticide-use category or categories for which the applicant is qualified. ~~Custom applicators, upon obtaining a valid license under this section, are certified applicators for the purpose of applying or directly supervising the use of restricted use pesticides pertinent to their respective categories 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.

~~Sec. 921.22 921.08. Nonresident custom applicators, custom operators, public operators, and limited 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 categorical pesticide-use category examination. However, such nonresidents may be required to demonstrate their knowledge of the laws this chapter and rules of this state adopted under it by submitting themselves to an examination covering such laws this chapter and those rules contained and promulgated~~

~~under this chapter. A nonresident custom operator can be licensed in this state only if his supervisor or employer is also licensed in this state. Private applicators certified in another state may operate in Ohio as do resident private applicators without also being certified in Ohio, except that they may be required to demonstrate their knowledge of the laws and rules of this state. Licenses or certificates issued pursuant to this section may be suspended or revoked in the same manner as other licenses or certificates issued pursuant to this chapter, or upon suspension or revocation of the license or certificate of another state or the federal government supporting the issuance of an Ohio a license or certificate issued under this section.~~

Sec. ~~921.021~~ 921.09. (A)(1) No person shall own or operate a pesticide ~~application~~ business without obtaining a license ~~for each location owned or operated by the person in the state~~ 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 ~~application~~ 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 ~~application~~ business license shall file a statement with the director, on a form provided by the director, that shall include ~~any~~ 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. Each

(2) Each applicant shall pay a license fee of twenty dollars per year for each pesticide application business license the applicant is required to obtain 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 ~~application~~ business shall employ at least one ~~licensed custom~~ commercial applicator for each pesticide ~~application~~ business registered location the owner or operator owns or operates.

(E) The owner or operator of a pesticide ~~application~~ 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 ~~application~~ 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 ~~application~~ business license to any ~~current owner, operator, officer, or agent~~ person whose pesticide ~~application~~ business license has been revoked within the previous thirty-six months.

~~(G) The director shall adopt any rules necessary to administer and enforce this section~~ (H) Each pesticide business registered location that is owned by a pesticide business is subject to inspection by the director.

Sec. 921.10. (A) The director of agriculture shall not issue a pesticide ~~application~~ 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 category and operation of the applicant pesticide-use categories in which commercial applicators are licensed to apply pesticides for the pesticide business.

~~(B) Should the evidence of financial responsibility expire without renewal prior to the expiration of the license, the license of the pesticide application business is automatically suspended.~~

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

~~(D)~~~~(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.

~~(E)~~~~(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.

Sec. 921.11. (A)(1) No individual shall apply restricted use pesticides unless the individual is one of the following:

(a) Licensed under section 921.06, ~~921.07, 921.08, or 921.12~~ of the Revised Code;

(b) ~~A private applicator certified~~ Licensed under division (B) of this section;

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

(d) An ~~employee or~~ immediate family member or a subordinate employee of a ~~certified~~ 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 ~~he~~ the individual is one of the following:

(a) Licensed under section 921.06, ~~921.07, 921.08, or 921.12~~ of the Revised Code;

(b) ~~A private applicator certified~~ Licensed under division (B) of this section.

(B) The director of agriculture shall adopt rules to establish standards

and procedures for the certification licensure of private applicators. An individual shall apply for certification as 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 certification is thirty dollars and the certification license shall be established by rule. Licenses shall be issued for a period is three years of time established by rule and shall be renewed in accordance with deadlines established by rule. If a certification 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.

Sec. 921.09 921.12. (A) The director of agriculture shall require each applicant for a license under sections section 921.06, 921.07, 921.08, and 921.12 or 921.11 of the Revised Code to be examined on the applicant's knowledge and competency in the 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, 921.07, 921.08, or 921.12 of the Revised Code, shall be filed prior to the deadline established by rule. If filed thereafter after the deadline, a penalty of fifty per cent shall be assessed the custom applicator and the custom operator and added to the original fee and shall be paid by the applicant before the renewal license is issued. However, if a license or certification issued under section 921.06, 921.07, 921.08, or 921.12 of the Revised Code is not renewed within one year of the date of expiration, then such the licensee or certificate holder 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 ~~custom applicator license, custom operator license, limited commercial applicator license, or public operator license~~ may renew ~~such~~ 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.

~~(D)~~(E) The director shall determine when re-examination for ~~recertification of 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.

Sec. 921.13. (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 ~~twenty-five dollar~~ 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 a custom applicator who exclusively sells pesticides only as an integral part of the custom applicator's pesticide application business when the pesticides are dispensed only through equipment used for the pesticide application or 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 ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter whether committed by the pesticide dealer or by the pesticide dealer's officer, agent, or employee.

Sec. 921.14. ~~(A) Each licensed custom applicator, limited commercial applicator, and public operator shall keep a record of all 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 him 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 and maintain that record.

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 three years from the date of the pesticide application to which that record refers or for any longer period that the director of agriculture determines necessary time established by rule.

(C) Each certified private applicator shall keep a record of all restricted use pesticide applications made by him the applicator or under his the applicator's direct supervision as required by rules adopted under division (C) of section 921.16 of the Revised Code and. In addition, each private applicator shall maintain that 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.

~~Each licensed custom applicator or custom operator shall keep a record of all diagnostic inspections to determine infestations of pests and of all pest control services as required by rules adopted under division (C) of section 921.16 of the Revised Code, and maintain that record for a period of three years from the date of the inspection to which that record refers or for any longer period that the director determines necessary.~~

Sec. 921.16. (A) The director of agriculture shall adopt rules the director determines necessary for the effective enforcement and administration of ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter. The rules may relate to, but are not limited to, the time, place, manner, and methods of application, materials, and amounts and concentrations of application of pesticides, may restrict or prohibit the use of pesticides in designated areas during specified periods of time, and shall encompass all reasonable factors that the director determines necessary to minimize or prevent damage to the environment. In addition, the rules shall establish the fees, deadlines, and time periods for registration and, registration renewal, late registration renewal, and failure to register under section 921.02 of the Revised Code; and the fees, deadlines, and time periods for licensure and license renewal under sections ~~921.021, 921.06, 921.07, 921.08, 921.12~~ 921.09, 921.11, and 921.13 of the Revised Code; and the deadlines for certification under section 921.11 of the Revised Code. The aggregate amount of the fees that initially are established by rule after the effective date of this amendment shall be designed to cover, but not exceed, the costs incurred by the department of agriculture in administering this chapter. Thereafter, the fees shall not be increased without the approval of the general assembly.

(B) The director shall adopt rules that establish a schedule of civil penalties for violations of ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter, or any rule or order adopted or issued under ~~those sections~~ it, provided that the civil penalty for a first violation shall not exceed five thousand dollars and the civil penalty for each subsequent violation shall not exceed ten thousand dollars. In determining the amount of a civil penalty for a violation, the director shall consider factors relevant to the severity of the violation, including past violations and the amount of actual or potential damage to the environment or to human beings.

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

- (1) Requires that notice or posting be given of a proposed application of a pesticide;
- (2) ~~Requires a permit to apply a restricted use pesticide;~~
- (3) Requires inspection, condemnation, or repair of equipment used to

apply a pesticide;

~~(4)~~(3) Will suspend, revoke, or refuse to issue any pesticide registration for a violation of ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter;

~~(5)~~(4) Requires safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

~~(6)~~(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;

~~(7)~~(6) Requires a record to be kept of all pesticide applications made by each ~~licensed custom applicator, limited commercial applicator, and public operator~~ and by any trained serviceperson acting under the commercial applicator's direct supervision and of all restricted use pesticide applications made by each ~~certified 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;

~~(8)~~(7) Determines ~~those~~ the pesticide-use categories of ~~applicators who conduct~~ diagnostic inspections that must be conducted by a commercial applicator;

~~(8)~~ Requires a record to be kept of all diagnostic inspections ~~or who offer pest control services that must be performed~~ conducted by a ~~certified~~ each commercial applicator ~~and for which written records are required~~ and ~~by any trained service person.~~

(D) The director shall prescribe standards for the ~~certification licensure~~ of applicators of pesticides consistent with those prescribed by the federal act and the regulations adopted ~~thereunder~~ 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 ~~and handling of pesticides or to the use and handling of the a pesticide or class of pesticide uses covered by the individual's certification, and shall relate to the hazards involved and the use experience~~ 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 ~~to designate~~ 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) ~~The~~ Except as provided in division (D) of this section, the director shall not adopt any rule under sections 921.01 to 921.29 of the Revised Code this chapter that meets either of the following:

~~(1) Permits any pesticide use that is prohibited by the federal act and regulations or orders issued thereunder;~~

~~(2) As to certified applicators of restricted use pesticides as designated under the federal act, and rules adopted as to experimental use permits as authorized by the federal act, 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. ~~The director may develop and enter into cooperative agreements with other state agencies for the purpose of developing and implementing voluntary or mandatory pesticide management plans that are designed to prevent unreasonable adverse effects on human health and the environment.~~

(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 sections 921.01 to 921.29 of the Revised Code this chapter in accordance with Chapter 119. of the Revised Code.

Sec. 921.18. (A) The director of agriculture may:

(1) Enter upon 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 in order to have access to do any or all of the following:

(a) Inspect and copy books, accounts, pesticide application records, contracts related to pesticide business activities, and memoranda, pesticides, or devices, subject to the sections of the law and the rules thereunder for the purpose of determining pesticide applications, the financial responsibility of the applicator, the documents;

(b) Inspect the storage or disposal of pesticides; also, to inspect

(c) Inspect and sample pesticides in storage or in use, the disposal of pesticides, to inspect;

(d) Inspect equipment or devices used to apply pesticides, and to make copies of records in conformity therewith;

(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 ~~certified or licensed~~, ~~or~~ if proper notice has been given before pesticide application, and to collect samples of pesticides being applied or available for use, ~~and to inspect equipment or devices used to apply pesticides;~~

(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, ~~he may~~ apply to any court of competent jurisdiction for a search warrant authorizing access to such land for ~~said~~ those purposes. The court may, upon such application, issue the search warrant for the purposes requested.

(B) When the director or ~~his~~ the director's authorized agent observes, or has reasonable cause to believe that a piece of equipment used by a ~~custom commercial applicator or operator~~, a private applicator, or any other individual requires calibration, adjustment, or repair to enable it to perform satisfactorily, ~~he~~ the director may require such adjustment to be made immediately or issue a "stop operation" order pending repair to the equipment and ~~he~~ 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 ~~sections 921.01 to 921.29 of the Revised Code~~ 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 ~~by~~ a court order. No release shall be issued until ~~sections 921.01 to 921.29 of the Revised Code~~, 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 ~~him~~ the owner or custodian, ~~the director may~~ 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.

Sec. ~~921.08~~ 921.19. (A) Every state agency, municipal corporation, and every other governmental agency and political subdivision is subject to ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter and the rules adopted thereunder with respect to the application, handling, and use of pesticides.

~~(B) No individual shall act as a public operator without having a public operator license issued by 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. The director shall by rule classify, by categories, licenses to be issued under this section.~~

~~(C) An individual shall apply to the director for a public operator license on a form prescribed by the director. Each application for a license shall state the license category or categories for which the applicant is applying, and any other information that the director determines essential to the administration of sections 921.01 to 921.29 of the Revised Code.~~

~~(D) After finding that the applicant is qualified, upon payment of a twenty-dollar license fee per year, the director shall issue a public operator license, limited to the category for which the applicant is qualified. The license and renewal fee does not apply to any applicant who is an employee of the department of agriculture. If a license is not issued or renewed, the fee submitted shall be retained by the state as payment for reasonable expenses of processing the application. Public operators, upon obtaining a valid license under this section, are certified applicators for the purpose of applying or directly supervising the use of restricted use pesticides pertinent to their respective categories. 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.~~

Sec. ~~921.151~~ 921.22. The pesticide program fund is hereby created in the state treasury. All money in the fund shall be used to carry out the purposes of this chapter. The fund shall consist of fees collected under sections 921.01 to 921.15 of the Revised Code and all fines, penalties, costs, and damages, except court costs, ~~which~~ that are collected by either the director of agriculture or the attorney general in consequence of any violation of ~~sections 921.01 to 921.29 of the Revised Code.~~ Not later than

~~the thirtieth day of June of each year, the director of budget and management shall determine whether the amount credited to the pesticide program fund is in excess of the amount necessary to meet the expenses of the director of agriculture in administering this chapter and shall transfer any excess from the pesticide program fund to the general revenue fund this chapter.~~

Sec. ~~921.24~~ 921.23. The director of agriculture may suspend, ~~pending inquiry prior to a hearing,~~ for not longer than ten days, ~~and, after the opportunity for hearing, may deny, suspend, revoke, refuse to renew, or modify any provision of~~ any license, permit, or ~~certification~~ registration issued pursuant to this chapter if ~~he~~ the director finds that the applicant or the holder of a license, permit, or ~~certificate~~ 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 Insecticide, Fungicide and Rodenticide Act~~ federal act, or has been convicted of a misdemeanor involving moral turpitude or of a felony.

Sec. ~~921.25~~ 921.24. ~~It is unlawful for any~~ No person to ~~shall~~ do any of the following:

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

(B) ~~Except as provided in division (C) of this section, use any pesticide Act as a commercial applicator without being licensed or certified to do so or being a trained serviceman under the direct supervision of a commercial applicator or limited commercial applicator;~~

(C) ~~Use any restricted use pesticide, unless certified~~ the person is licensed to do so, ~~acting as a trained serviceman under the direct supervision of a commercial applicator or limited commercial applicator,~~ is a trained serviceperson acting under the direct supervision of a commercial applicator, or ~~acting as~~ is an employee or 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 ~~and~~ or maintain records required by the director in rules ~~he adopts~~ adopted under ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter, or to make reports when and as required by the director in rules ~~he adopts~~ adopted under ~~sections 921.01 to 921.29 of the Revised Code~~ 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) ~~Directly supervise the use of any restricted use pesticide on the property of another without having a certified applicator in~~ 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;
- ~~(K) Directly supervise the use of any general use pesticide on the property of another without having a licensed applicator in direct supervision~~
- (L) Distribute a misbranded or adulterated pesticide;
- ~~(L)(M)~~ Use fraud or misrepresentation in making application for a license or certificate registration or renewal of a license or certificate registration;
- ~~(M)(N)~~ Refuse, fail, or neglect to comply with any limitation or restriction of a license or registration issued pursuant to sections 921.01 to 921.29 of the Revised Code under this chapter or rules adopted thereunder;
- ~~(N)(O)~~ Aid or abet a licensee or another person in violating sections 921.01 to 921.29 of the Revised Code this chapter or rules adopted thereunder;
- ~~(O)(P)~~ Make a false or misleading statement in an inspection concerning any infestation of pests or the use of pesticides;
- ~~(P)(Q)~~ Refuse or fail to comply with sections 921.01 to 921.29 of the Revised Code this chapter, the rules adopted thereunder, or with any lawful order of the director;
- ~~(Q)(R)~~ Distribute restricted use pesticides to the ultimate user or to an employee who is a commercial applicator at any time without a pesticide dealer's license or;
- (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 a certified applicator licensed under sections 921.01 to 921.29 section 921.06, 921.08, or 921.11 of the Revised Code and rules adopted thereunder under this chapter;
- ~~(R)(T)~~ Use any pesticide that is under an experimental use permit contrary to the provisions of such the permit;
- ~~(S)(U)~~ Engage in fraudulent business practices in the application of pesticides, when licensed as a custom applicator;

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

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

~~(V)~~(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.

Sec. 921.26 921.25. (A)(1) Whenever the director of agriculture has cause to believe that any person has violated, or is violating, ~~sections 921.01 to 921.29 of the Revised Code, this chapter~~ or any rule or order adopted or issued under ~~those sections~~ it, he the director may conduct a hearing ~~which shall be~~ in accordance with Chapter 119. of the Revised Code to determine whether a violation has occurred. The ~~Except as otherwise provided in division (A)(3) of this section, the~~ director shall assess a civil penalty against any person who violates ~~sections 921.01 to 921.29 of the Revised Code, this chapter~~ or any rule or order adopted or issued under ~~those sections~~, it in accordance with the schedule of civil penalties established in rules adopted under division ~~(A)(B)~~ of section 921.16 of the Revised Code. Each day a violation continues constitutes a separate and distinct violation.

(2) ~~In addition, the director may assess a civil penalty against any employer of a person who violates sections 921.01 to 921.29 of the Revised Code, or any rule or order adopted or issued under those sections, for the same violation for which he fines the employee, if one of the following applies:~~

~~(a) With prior knowledge of the employee's act or omission which constitutes the violation, the employer authorizes, approves, or otherwise actively participates in the act or omission;~~

~~(b) After the occurrence of the employee's act or omission that constitutes the violation, the employer, with full knowledge of the act or omission, ratifies it;~~

~~(c) The employer had knowledge that the act or omission of the employee that constitutes the violation would occur~~ 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) ~~and (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.

~~(3)(4)~~ If the ~~person or employer or employee~~ 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 ~~sections 921.01 to 921.29 of the Revised Code, this chapter~~ or any rule or order adopted or issued under ~~those sections~~ 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 ~~shall constitute~~ constitutes a separate and distinct violation.

~~(2) If the director refers a violation to the attorney general under division (B)(1) of this section, the attorney general, in addition, may bring a civil action against any employer of a person who violates sections 921.01 to 921.29 of the Revised Code, or any rule or order adopted or issued under those sections. The court shall order the employer to pay a civil penalty for the same violation for which the court orders the employee to pay a civil penalty, if one of the following applies:~~

~~(a) With prior knowledge of the employee's act or omission which constitutes the violation, the employer authorizes, approves, or otherwise actively participates in the act or omission;~~

~~(b) After the occurrence of the employee's act or omission that constitutes the violation, the employer, with full knowledge of the act or omission, ratifies it;~~

~~(c) The employer had knowledge that the act or omission of the employee that constitutes the violation would occur~~ The civil action authorized under division (B)(1) of this section may be brought against the employer of a person who violates this chapter or any rule adopted or order issued under it rather than against the person.

Divisions (B)(1) and (2) of this section do not affect, and shall not be construed as affecting, any other civil or criminal liability of the employee or the employer ~~which 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 ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter.

(D) The remedies available to the director and to the attorney general under ~~sections 921.01 to 921.29 of the Revised Code~~ 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.

~~Sec. 921.23~~ 921.26. (A) The penalties provided for violations of ~~sections 921.01 to 921.29 of the Revised Code~~ 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 ~~public operators~~ commercial applicators employed by the federal government, the state, or a political subdivision, while engaged in the performance of their official duties in administering state or federal pesticide laws or rules, or while engaged in pesticide research;

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

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

receive any benefit in pest control from its use;

(5) Persons conducting laboratory research involving pesticides;

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

(B) No pesticide or device shall be considered in violation of ~~sections 921.01 to 921.29 of the Revised Code~~ 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, ~~the provisions of sections 921.01 to 921.29 of the Revised Code apply~~ this chapter applies.

(C) No person who is licensed, regulated, or registered under section 921.02, ~~921.021~~, 921.03, 921.06, ~~921.07~~, 921.08, ~~921.09~~, 921.11, ~~921.12~~, or 921.13, ~~or 921.15~~ 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 921.06~~ 921.09 of the Revised Code ~~relating to a custom applicator~~ does not apply to an individual who uses only ground equipment for ~~himself~~ the individual or for ~~his~~ the individual's neighbors, provided that ~~he~~ the individual meets all of the following requirements:

(1) ~~Is certified as a private applicator if he uses a restricted use pesticide licensed under section 921.11 of the Revised Code;~~

(2) Operates farm property and operates and maintains pesticide application equipment primarily for ~~his~~ the individual's own use;

(3) Is not regularly engaged in the business of applying pesticides for hire or does not publicly hold ~~himself~~ oneself out as a pesticide applicator;

(4) Meets any other requirement established by rule.

(E) ~~Sections~~ Section 921.06 ~~and 921.07~~ of the Revised Code relating to licenses and requirements for their issuance ~~do~~ does not apply to licensed physicians or veterinarians applying pesticides to ~~man~~ 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.

Sec. 921.27. (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 ~~sections 921.01 to 921.29 of the Revised Code, this chapter~~ or of any ~~of the prescribed 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 ~~such the~~ article is sold, less legal costs, shall be paid to the pesticide program fund created in section ~~921.151~~ 921.22 of the Revised Code. The article shall not be sold contrary to ~~the provisions of~~ 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.

Sec. 921.29. Fines, penalties, costs, and damages assessed against a person in consequence of violations of ~~sections 921.01 to 921.29 of the Revised Code this chapter~~, as provided in ~~sections 921.01 to 921.29 of the Revised Code this chapter~~ or any other section of the Revised Code, shall be a lien in favor of the state upon the real and personal property of the person, upon the filing of a judgment or an order of the director of agriculture with the county in which the real and personal property is located. The real and personal property of the person shall be liable to execution for the fines, penalties, costs, and damages by the attorney general, who shall deposit any proceeds from an execution upon the property in the pesticide program fund created in section ~~921.151~~ 921.22 of the Revised Code.

Sec. 921.30. 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.

Sec. ~~921.30~~ 921.31. 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,

~~eat~~ registration, or permit issued pursuant to this chapter.

Sec. 921.99. (A) Whoever violates ~~sections 921.01 to 921.29 of the Revised Code~~ this chapter or rules adopted under ~~those sections~~ it, except division (G) or ~~(O)~~ (P) of section ~~921.25~~ 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 ~~(O)~~ (P) of section ~~921.25~~ 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 ~~such~~ that action.

SECTION 4. That existing sections 907.42, 921.01, 921.02, 921.021, 921.06, 921.08, 921.09, 921.10, 921.11, 921.13, 921.14, 921.151, 921.16, 921.18, 921.22, 921.23, 921.24, 921.25, 921.26, 921.27, 921.29, 921.30, and 921.99 and sections 921.07 and 921.12 of the Revised Code are hereby repealed.

SECTION 5. Sections 3 and 4 of this act shall take effect July 1, 2004. Before that date, the Director of Agriculture shall continue to issue custom applicator licenses under section 921.06, custom operator licenses under section 921.07, public operator licenses under section 921.08, and limited commercial applicator licenses under section 921.12 of the Revised Code. Those licenses shall continue to be valid until the date on which they expire regardless of whether the expiration date is on or after July 1, 2004. On and after July 1, 2004, the Director shall cease to issue those licenses and instead shall issue commercial applicator licenses under section 921.06 of the Revised Code as amended by this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____