

DIVISION 7. AGRICULTURAL CHEMICALS, LIVESTOCK REMEDIES, AND  
COMMERCIAL FEEDS

|   |                               |
|---|-------------------------------|
| CHAPTER 1. DEFINITIONS .....  | <a href="#">12500-12500.6</a> |
| CHAPTER 1.5. PRODUCE CARRYING PESTICIDE RESIDUE   |                               |
| Article 1. Definitions .....  | <a href="#">12501-12505</a>   |
| Article 2. General Provisions .....   | <a href="#">12531-12536</a>   |
| Article 3. Permissible Tolerances .....   | <a href="#">12561-12565</a>   |
| Article 4. Inspection .....   | <a href="#">12581-12582</a>   |
| Article 4.5. Commercial Laboratories .....  | <a href="#">12591-12595</a>   |
| Article 5. Seizure .....  | <a href="#">12601-12615</a>   |
| Article 6. Abatement as Public Nuisance .....   | <a href="#">12641-12649</a>   |
| Article 7. Violations .....   | <a href="#">12671-12674</a>   |
| CHAPTER 2. PESTICIDES   |                               |
| Article 1. Definitions .....  | <a href="#">12751-12759</a>   |
| Article 2. General Provisions .....   | <a href="#">12781-12784</a>   |
| Article 2.5. Agricultural Pest Control Research .....   | <a href="#">12786-12798.6</a> |
| Article 3. Exemptions .....   | <a href="#">12801-12804</a>   |
| Article 4. Registration .....   | <a href="#">12811-12837</a>   |
| Article 4.5. Assessments .....  | <a href="#">12841-12847</a>   |
| Article 5. Labeling and Warranty .....  | <a href="#">12851-12859</a>   |
| Article 6. Misbranding .....  | <a href="#">12881-12885</a>   |
| Article 7. Adulteration .....   | <a href="#">12911</a>         |
| Article 8. Analysis .....   | <a href="#">12931</a>         |
| Article 9. Seizure .....  | <a href="#">12961</a>         |
| Article 10. Recommendations and Usage .....   | <a href="#">12971-12979</a>   |
| Article 10.5. Pesticides and Worker Safety .....  | <a href="#">12980-12988</a>   |
| Article 11. Violations .....  | <a href="#">12991-12995</a>   |
| Article 12. Penalties and Injunctive Relief .....   | <a href="#">12996-13000.1</a> |
| Article 13. Cease and Desist .....  | <a href="#">13101-13102</a>   |
| Article 14. Birth Defect Prevention .....   | <a href="#">13121-13135</a>   |
| Article 15. The Pesticide Contamination Prevention Act .....                                      | <a href="#">13141-13152</a>   |
| Article 16. The Interim Data Gap Exemption for Qualified<br>Federally Registered Pesticides ..... | <a href="#">13161-13170</a>   |
| Article 17. Healthy Schools Act of 2000 .....   | <a href="#">13180-13188</a>   |
| Article 18. Contamination of Compost .....  | <a href="#">13190-13192</a>   |
| CHAPTER 3. RESTRICTED MATERIALS   |                               |
| Article 1. Generally .....  | <a href="#">14001-14015</a>   |
| Article 1.5. Pesticides .....   | <a href="#">14021-14027</a>   |
| Article 2. 2,4-D and Other Herbicides .....   | <a href="#">14031-14034</a>   |
| Article 3. Compound 1080 .....  | <a href="#">14061-14063</a>   |
| Article 4. Methyl Bromide and Chloropicrin .....  | <a href="#">14081-14082</a>   |
| CHAPTER 3.4. PRIVATE APPLICATOR CERTIFICATION .....   | <a href="#">14090-14099.5</a> |
| CHAPTER 7. STRUCTURAL PEST CONTROL .....  | <a href="#">15201-15206.6</a> |
| CHAPTER 7.5. STRUCTURAL PEST CONTROL DEVICES  |                               |
| Article 1. Definitions .....  | <a href="#">15300</a>         |
| Article 2. General Provisions .....   | <a href="#">15301-15303</a>   |
| Article 3. Device Registration .....  | <a href="#">15305-15320</a>   |
| Article 4. Labeling and Warranty .....  | <a href="#">15325-15327</a>   |
| Article 5. Seizure .....  | <a href="#">15330</a>         |
| Article 6. Device Usage .....   | <a href="#">15331</a>         |
| Article 7. Violations .....   | <a href="#">15340</a>         |

**CHAPTER 1 DEFINITIONS**

12500. As used in Chapter 1.5 (commencing with Section 12501), Chapter 2 (commencing with Section 12751) except Article 2.5 (commencing with Section 12786), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), Chapter 3.6 (commencing with Section 14151) and Chapter 7 (commencing with Section 15201), "department" means the Department of Pesticide Regulation. As used in Article 2.5 (commencing with Section 12786) of Chapter 2, Chapter 4 (commencing with Section 14200), Chapter 5 (commencing with Section 14501), and Chapter 6 (commencing with Section 14901), "department" means the Department of Food and Agriculture.

12500.5. "Director" means the Director of Pesticide Regulation.

12500.6. "Secretary" means the Secretary of Food and Agriculture.

## **CHAPTER 1.5 PRODUCE CARRYING PESTICIDE RESIDUE**

### **Article 1. Definitions**

12501. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

12502. "Food" means any article which is used for food or drink for man or any other animal, or for a component of any such article.

12503. "Pesticide chemical" means any substance that is used in the production, storage, or transportation of produce that is a pesticide as defined in Section 12753.

12504. "Produce" means any food in its raw or natural state which is in such form as to indicate that it is intended for consumer use with or without any or further processing.

12505. "Pesticide residue" means any pesticide chemical which is added to produce.

### **Article 2. General Provisions**

12531. The director may adopt such regulations as are reasonably necessary to carry out this chapter.

12532. (a) The director shall continuously interpret the results of the residue monitoring program in order to assess its general effectiveness at preventing public exposure to illegal pesticide residues.

(b) The director shall release to the public, on an annual basis, comprehensive summaries of the results of the pesticide residue monitoring program. The director shall disclose information regarding the disposition of products found to contain illegal pesticide residue levels.

(c) The director shall identify in his or her reports the specific county where unprocessed agricultural foods have been discovered to

contain illegal pesticide residue levels, the specific commodity, and the county where the commodity was produced.

(d) The director shall file copies of all data sheets for over tolerances with the commissioner for the county where the unprocessed agricultural foods have been grown.

(e) The director shall include in the reports, in addition to the specific commodity affected, the pesticide identified for each illegal residue found.

12533. Nothing in this chapter repeals or amends any of the provisions of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code.

12534. (a) Pursuant to this chapter, the director shall conduct a pesticide residue monitoring program for produce destined for processing to determine which pesticides are most likely to leave a residue and to what extent it is necessary to monitor the produce.

(b) The results of the program shall be made available to the State Director of Health Services to provide accurate information to better focus sampling priorities.

12535. (a) Commencing in 1990, the department shall substantially expand and maintain its focused pesticide residue monitoring program beyond the 1988 level. The focused monitoring program shall be prioritized to consider pesticides of greatest health concern and contribution to dietary exposure, and for various subpopulations which may be uniquely sensitive to pesticide residues, with special emphasis on infants and children.

(b) The department shall consider, but not be limited to, the following lists of pesticides in establishing priorities for monitoring:

(1) Pesticides identified by the federal Environmental Protection Agency as known, possible, or probable human carcinogens which are registered for use on food crops.

(2) Pesticides listed as high priority for risk assessment as a result of the evaluation process of the Birth Defect Prevention Act of 1984.

(3) Pesticides listed as known to cause cancer or reproductive toxicity pursuant to Section 25249.9 of the Health and Safety Code.

(4) Class I and II pesticides on the United States Food and Drug Administrations's Surveillance Index.

12536. (a) The director, by regulation, shall establish a pest management advisory committee, specifying, as appropriate, the scope and purpose of its advisory role, membership requirements, and operating procedures. The director, or his or her designee, shall serve as chairperson of the committee and the secretary, or his or her designee, shall serve as vice-chairperson of the committee. At a minimum, the committee shall assist the department in identifying, facilitating, and promoting environmentally sound pest management practices and pest management systems.

(b) Funds in the Food Safety Account in the Department of Pesticide Regulation Fund may be expended, upon appropriation for pest management research purposes, and upon the joint decision of the chairperson and vice-chairperson, to carry out the recommendations of the pest management advisory committee.

### **Article 3. Permissible Tolerances**

12561. The director by regulation may establish permissible tolerances for any pesticide chemical in or on produce if he or she finds each of the following:

(a) The pesticide chemical is useful for the production and marketing of the produce.

(b) The presence of the pesticide chemical as pesticide residue in quantities within the tolerances so established is not deleterious to the health of man or animals.

12562. The director may exempt any pesticide chemical from the requirement of a tolerance if he finds that the pesticide chemical may safely be used without a tolerance.

12563. The director may establish the tolerance for any pesticide chemical on produce at zero if he finds that a greater tolerance is not justified.

12565. If a tolerance for a pesticide chemical in or on produce is established pursuant to any law of the United States, the director may review the tolerance, and if he finds that it is in accordance with the standards and provisions of this chapter, he may establish a like tolerance pursuant to this chapter.

### **Article 4. Inspection**

12581. The director may inspect and take samples of any produce grown, processed, packed, stored, shipped, transported, delivered for shipment, or sold.

12582. The director shall immediately notify the State Director of Health Services by telephone, with immediate written confirmation, whenever a lot of produce destined for processing is found to be in violation of this chapter.

### **Article 4.5. Commercial Laboratories**

12591. The director may accredit a commercial laboratory to test produce or environmental samples, including air, water, soil, and plant or animal tissue for regulatory pesticide residue purposes if the director finds all of the following conditions:

(a) That the department laboratories cannot handle required testing in a timely manner or that the use of a commercial laboratory is more cost-effective to the department or a segment of agriculture.

(b) That the laboratory agrees to and participates in a quality control oversight program as specified by the director.

(c) That the laboratory's control and analytical protocols meet criteria established by the director.

(d) That, as part of the quality control oversight program, the director may conduct unannounced onsite inspections of the laboratory during normal business hours.

12592. The director may charge a fee for accreditation and quality control oversight in an amount sufficient to cover the reasonable costs of carrying out these programs.

12593. The director may refuse to accredit, or may suspend any accreditation, if the applicant or the accredited laboratory, as the case may be, does any of the following:

(a) Does not meet, or no longer meets, the requirements stated in Section 12591.

(b) Fails to perform in accordance with the performance standards set forth in the quality control oversight program.

12594. Analysis data developed by an accredited laboratory shall be subject to confirmation by a laboratory of the department prior to an official regulatory action of the director.

12595. In the event of a dispute of the findings of a chemical analysis between or among two or more accredited laboratories or between an accredited laboratory and a laboratory of the department, an appeal analysis may be requested by letter, telegram, or other writing to the director. The sample to be analyzed in the appeal analysis shall be submitted to the headquarters laboratory of the department at Sacramento. The cost of the appeal analysis, including any sampling or shipping required, shall be at the expense of the requesting party. The findings from the appeal analysis are binding on all parties.

## **Article 5. Seizure**

12601. The director may seize and hold any lot of produce, or any unharvested produce that is within one week of being in a harvestable condition, which carries or is suspected of carrying pesticide residue or other added deleterious ingredients in violation of this chapter or any regulation adopted pursuant to this chapter.

12602. If the director seizes any lot of produce, he shall issue to the owner or bailee a hold order or notice. He may affix to the lot a warning tag which states that the lot is so held.

12603. Any lot of produce for which a hold order or notice is issued shall be held by the owner or bailee of the produce and shall not be disturbed or moved from the place where it is, except under the specific direction of the director, pending final disposition pursuant to this chapter.

This does not prevent the owner or bailee from inspecting any produce so seized, nor from taking therefrom, in the presence of a person designated by the director, a reasonable sample for evidence.

12604. Any produce which is seized and held pursuant to this article, unless previously analyzed by the director, shall be sampled and analyzed within 24 hours after the seizure for the purpose of

determining the amount of pesticide residue on it. The owner or bailee of the produce shall be immediately notified in person or by telegram by the director that the analysis of the sample shows that the produce does or does not carry pesticide residue or other added deleterious ingredient in violation of this chapter or any regulation adopted pursuant to this chapter.

12605. Upon the demand of the owner or bailee at or prior to the time of the sampling by the director, the sample which is drawn shall be divided into two approximately equal parts, one part of which shall be sealed and left with the owner or bailee and one part taken for analysis by the director.

12606. If the seized and held lot, as determined by the director's chemical analysis, does not carry pesticide residue in excess of any maximum which is provided by this chapter or in excess of a permissible tolerance, the director shall forthwith release the seized and held lot from the seizure and remove the hold order or tag.

12607. If the seized and held lot of produce is found to carry pesticide residue in excess of any maximum which is provided by this chapter or in excess of a permissible tolerance, the director shall, upon request of the owner, permit the lot of produce to be reconditioned or disposed of for byproducts purposes which may lawfully contain the pesticide residue found.

12608. Upon demand of the owner or bailee for permission to remove the produce for reconditioning or use for byproducts, the director shall release the produce to the custody of the agricultural commissioner of any county which is designated by the owner or bailee if the commissioner advises the director that facilities for reconditioning the produce or for converting it into byproducts are available in the county and that the commissioner will supervise the reconditioning or conversion into byproducts of the lot if it is released.

12608.5. Upon demand of the owner or person in rightful possession of the produce for permission to remove the produce destined for processing, the director shall release the produce to the custody of the State Director of Health Services.

12609. The produce after reconditioning is subject to all the provisions of this chapter pending its final release by the director pursuant to Section 12606.

12610. If the lot of produce which is seized and held is found to carry excess pesticide residue, the owner or bailee of the lot may appeal the result of the examination to the director by letter, telegram, or other writing, within three days of the notice to the owner or bailee which is provided for in Section 12604.

12611. Upon receipt of an appeal by the owner or bailee, the director shall, after reasonable notice to the owner, if known, or, if not known, to the bailee, take a further sample and submit it under an individual lot number to the headquarters laboratory of the department at Sacramento for an appeal chemical analysis.

12612. The director shall permit the owner to be present in person or by his representative at the taking of the sample to be submitted for the appeal chemical analysis. The cost of the sampling and analysis shall be at the expense of the owner or bailee. The findings from the appeal chemical analysis are binding on both parties.

12613. After seizure by the director pursuant to this chapter of any lot of produce upon which an appeal analysis is to be made, the director upon request shall permit the owner or bailee to move the produce to a specified commercial cold storage warehouse which is suited for preserving it against deterioration. The storage is subject, however, to the terms of any hold order or notice issued pursuant to this article.

12614. If the appeal analysis shows that the lot of produce carries pesticide residue in excess of any maximum which is provided in this chapter or in excess of a permissible tolerance, the lot of produce may be disposed of pursuant to Sections 12607, 12608, and 12609.

12615. If the appeal analysis shows that the lot of produce does not carry pesticide residue in excess of any maximum which is provided by this chapter, or in excess of a permissible tolerance, the director shall forthwith release the lot from the seizure and remove the hold order or tag.

## **Article 6. Abatement as Public Nuisance**

12641. As used in this article, "nuisance" means the public nuisance which is specified in Section 12642.

12642. Any lot of produce which is found to carry pesticide residue in excess of any maximum which is provided in this chapter, or in excess of a permissible tolerance, together with its containers, is a public nuisance, and if not disposed of pursuant to Article 5 (commencing with Section 12601) of this chapter, is subject to disposal on complaint of the director to a court of competent jurisdiction.

12643. The district attorney of the county in which the nuisance is found, at the request of the director, shall maintain, in the name of the people of the State of California, a civil action to abate and prevent the nuisance.

12644. Upon judgment and by order of the court, the nuisance shall be condemned and destroyed in the manner directed by the court, or denatured or otherwise processed, or released upon such conditions as the court in its discretion may impose to insure that the nuisance shall be abated.

12645. If the owner fails to comply with the order of the court within the time which is specified in the order, the court may order the disposal or sale of the produce or containers which are a nuisance, under the terms and conditions as the court may prescribe,

by the director, or by the sheriff or marshal.

12646. If the court orders the sale of any of the produce or containers which can be salvaged, the costs of disposal shall be deducted from the proceeds of sale and the balance paid into court for the owner.

12647. A proceeding pursuant to this article where the value of the property seized amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil case.

12648. (a) Notwithstanding any other provision of this code, a site within this state that has been treated with, or a plant, crop, or commodity, whether grown in this state or elsewhere, that has been treated with, or grown on a site treated with, a pesticide that is not registered for use on that plant, crop, commodity, or site is a public nuisance and may be seized by order of the director.

(b) The unlawful treatment described in subdivision (a) creates, in favor of the director, rebuttable presumptions affecting the burden of producing evidence pursuant to Section 604 of the Evidence Code as follows:

(1) That the treated plant, crop, commodity, or site, or any plant, crop, or commodity grown on the treated site, presents a hazard to human health or the environment.

(2) That the pesticide was used to gain an unfair business advantage for the owner or person in possession or control of the plant, crop, commodity, or site.

(c) The director shall provide notice to the owner or person in possession or control of the plant, crop, commodity, or site prior to seizure, unless the director has reason to believe that prior notice would result in the loss of control by the director of that plant, crop, commodity, or site, in which case notice shall be given as soon as practical, but in any event within five days of the seizure. The notice shall specify the grounds for the seizure and provide that the owner or person in possession or control, within 15 days of receipt of the notice, may request a hearing before the director to contest the seizure or rebut the presumptions specified in subdivision (b). The hearing shall be held not later than five days from the date the request of the owner or person is received by the director. The director shall render a written decision within five days of the hearing or within five days of the expiration of the time to request a hearing if no hearing was requested. The decision shall either release the plant, crop, commodity, or site from seizure or make any of the following orders:

(1) Destruction of the plant, crop, or commodity.

(2) Prohibition of harvest or sale of the plant, crop, or commodity grown on the site.

(3) Prohibition of the use or planting of the site, which may be for the period of any plant back time specified for the pesticide used on the site.

(4) Any other appropriate action or measure.

(d) Review of the decision of the director may be sought by the owner or person in possession or control of the plant, crop, commodity, or site pursuant to Section 1094.5 of the Code of Civil Procedure.

12648.5. (a) It is unlawful for the owner of a plant, crop, or

commodity to knowingly treat or apply to that plant, crop, or commodity, or cause that plant, crop, or commodity to be treated or applied, with a pesticide that was stolen or otherwise acquired by illegal means.

(b) The owner of a crop, who is found by a court to have violated this section, in addition to any other penalties imposed by a court, shall be subject to a fine of ten thousand dollars (\$10,000) plus an amount equal to one-half the value of the crop on which the illegally obtained pesticide was applied.

(c) For purposes of this section, "one-half the value of the crop" means one-half the market value of the crop that was actually treated with the illegally obtained pesticide as determined by the actual sale of the crop or, if the crop is not actually sold, as determined by the director based on an average of the typical market value for such a crop sold in the normal channels of trade in the year in which the crop was produced and in the preceding two years.

(d) Moneys received as a result of fines and penalties imposed pursuant to this section shall be divided and distributed as follows:

(1) Fifty percent to the county in which the case was brought to court or in which a court-approved settlement of the matter was negotiated.

(2) Twenty-five percent to the office of the county agricultural commissioner.

(3) Twenty-five percent to the department.

12648.6. Any person who is licensed pursuant to this code and who is found by a court to have knowingly sold, applied, or provided pesticides that were stolen or otherwise obtained illegally, in addition to any other penalty that may be imposed, shall have his or her license or licenses suspended for a minimum of 18 months.

12649. The director may bring an action to enjoin the violation or the threatened violation of any order made pursuant to Section 12648 in the superior court in the county in which the order was issued or the violation has occurred or is threatening to occur. The court may enjoin the violation or threatened violation upon this showing and without evidence of irreparable injury. The court may compel specific performance of any acts or course of conduct necessary to implement any order made pursuant to Section 12648.

## **Article 7. Violations**

12671. It is unlawful for any person to pack, ship, or sell any produce that carries pesticide residue in excess of the permissible tolerance which is established by the director pursuant to this chapter.

12672. The director or commissioner may prohibit the harvest of any produce or may seize and hold any lot of produce when a preharvest interval specified in the registered labeling of a pesticide applied to the produce has not been complied with. Except as provided in Section 12673, this harvest prohibition shall not extend beyond the expiration of the preharvest interval. Lots of produce so seized shall be held until the preharvest interval has expired and the director has determined that any pesticide residue is within a

permissible tolerance.

12673. The director or commissioner may prohibit the harvest of any produce that carries pesticide residue in excess of a permissible tolerance which is established by the director pursuant to this chapter.

12674. It is unlawful for any person to harvest, pack, ship, sell, transport, destroy, or dispose of any plant, crop, or commodity which has been seized pursuant to Section 12648, except in accordance with the decision of the director issued pursuant to Section 12648, unless the person otherwise has received written permission from the director.

## **CHAPTER 2. PESTICIDES**

### **Article 1. Definitions**

12751. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

12752. "Defoliating" includes killing or artificially accelerating the drying of plant tissues, with or without causing abscission.

12753. "Pesticide" includes any of the following:

(a) Any spray adjuvant.

(b) Any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, as defined in Section 12754.5, which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment whatsoever.

12754. "Insect" means any animal within the class of animals which are known as "Insecta" or any similar animal such as a centipede, spider, mite, tick, or louse.

12754.5. "Pest" means any of the following that is, or is liable to become, dangerous or detrimental to the agricultural or nonagricultural environment of the state:

(a) Any insect, predatory animal, rodent, nematode, or weed.

(b) Any form of terrestrial, aquatic, or aerial plant or animal, virus, fungus, bacteria, or other microorganism (except viruses, fungi, bacteria, or other microorganisms on or in living man or other living animals).

(c) Anything that the director, by regulation, declares to be a pest.

12755. "Registrant" means a person that has registered a pesticide and has obtained a certificate of registration from the department.

12756. "Regulating plant growth" means the use of 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 plants or the produce thereof.

However, it shall not include the use of substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

Also, "regulating plant growth" shall not be required to include at all the use of any of such of those nutriment mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants and are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

12757. "Rodent" means all members of the order Rodentia and all rabbits and hares.

12757.5. "Service container" means any container, other than the original labeled container of a registered pesticide provided by the registrant, that is utilized to hold, store, or transport the pesticide or the use-dilution of the pesticide.

12758. "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, which is intended to be used with another pesticide as an aid to the application or effect of the other pesticide, and sold in a package that is separate from that of the pesticide other than a spray adjuvant with which it is to be used.

12758.5. "Use-dilution" means a dilution specified on the label or labeling that produces the concentration of the pesticide for a particular purpose or effect.

12759. "Weed" means any plant which grows where not wanted.

## **Article 2. General Provisions**

12781. The director may adopt regulations which are reasonably necessary to carry out this chapter.

12782. A copy of the regulations which are adopted by the director pursuant to this chapter shall be mailed to each registrant promptly upon promulgation of the regulation. The failure to receive such copy is no defense to a violation of any regulation.

12783. Any person who is charged with the enforcement or execution of this chapter shall not be directly or indirectly interested in the sale, manufacture, or distribution of any pesticide.

12784. Any money that is received by the director pursuant to this chapter shall be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund. Registration fees and assessments received pursuant to this chapter shall be expended only for the administration and enforcement of Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), and Chapter 3.5 (commencing with Section 14101) of Division 7.

## **Article 2.5. Agricultural Pest Control Research**

12786. The Legislature hereby finds and declares all of the following:

(a) The continued viability of the agricultural economy is of paramount importance to the people of California.

(b) The development of alternatives to existing pesticides available for the control of pests is prudent, and the development of alternatives to pesticides is important for the protection of the public health and safety.

(c) The ability of the state to control, detect, exclude, and eradicate pest infestations is necessary to continue the preeminent position of this state as the leading farm state and is essential for the continuing supply of foodstuffs.

12790. Proposals for research consistent with the purposes of this article may be submitted to the committee by any person, organization, institution, or governmental agency.

12794. Members of the research and screening committees shall serve without compensation, but shall be reimbursed for all necessary expenses incurred in the performance of their duties and approved by the secretary.

12794.5. The department shall prepare an annual report of the research projects proposed, approved projects awarded, the status of ongoing research projects, the findings achieved from completed research projects, and the progress toward developing and implementing pest management alternatives in the state. The report shall be submitted annually to the Legislature, on or before February 1.

12795.5. The Ethanol Fuel Revolving Account in the Department of Food and Agriculture Fund is hereby continued in existence and renamed the Agricultural Pest Control Research Account.

12795.6. It is the intent of the Legislature that sufficient funds, not to exceed two hundred fifty thousand dollars (\$250,000), be appropriated from the Agricultural Pest Control Research Account annually, through the 1991-92 fiscal year, to the department to enable it to continue to contract for research conducted pursuant to this article and Section 462.

12797. To the extent that funding is available, the secretary shall maintain a program to develop new methods and modify existing methods for testing produce for the presence of pesticide residues. The secretary may consult with representatives of the federal Food and Drug Administration, the State Department of Health Services, the Department of Pesticide Regulation, public and private institutions of higher education, other laboratories, or any other entity he or she deems appropriate. The secretary shall focus his or her review on analytical methods for pesticide residues that are not detectable on existing multiple-residue screens, and on pesticide residue detection methods that the secretary deems are difficult to

accurately identify and quantify due to time, equipment, or expense.

12798. (a) The department shall establish a competitive grants program to make funds available to qualified public and private entities to conduct pest management research projects. All of the research related to pest management funded by the department shall be administered pursuant to this program.

(b) Research conducted pursuant to this section shall have the further development of alternative pest management practices and methods and the further development of pest exclusion detection and eradication methods as priorities. Prior to making research awards, the department shall assess existing research activities and developments in integrated pest management, alternatives to pesticides, and other alternative pest management practices and methods, including, but not limited to, cultural, biological, and biotechnological research.

(c) (1) The secretary shall establish a Pest Management Research Committee which shall award all funds under the competitive grants program.

(2) The primary objective of the committee is the further development of pest prevention activities and alternative pest management practices, techniques, and methods that exclude serious pests, as determined by the committee, which detect and quickly eliminate small infestations of foreign pests, and which reduce pesticide use, minimize or eliminate pesticide residues, or result in the use of safer pesticides. In achieving that objective, the committee shall encourage the development and use of biological controls, integrated pest management, biotechnology, cultural, pest prevention, and other alternative pest management methods that are environmentally sound and economically viable.

(3) The committee shall consist of the following 12 persons, who shall serve at the pleasure of the secretary:

(A) The Secretary of Food and Agriculture or his or her designee, who shall serve as chairperson.

(B) The President of the University of California or his or her designee.

(C) The Chancellor of the California State University or his or her designee.

(D) Two members who represent the agricultural community, one of whom is an experienced organic farmer and one of whom is knowledgeable and experienced in alternative pest management techniques.

(E) Two members who represent pest management researchers, one of whom represents California's public and private colleges and universities and one of whom represents California's independent research community, both of whom are knowledgeable in pest prevention, control, eradication, and pest management.

(F) One member who represents public interest organizations, qualified in environmental or public health, or both, and knowledgeable in alternative pest management techniques.

(G) One member who represents the Office of Environmental Health Hazard Assessment, with experience in public health or toxicology.

(H) One member who represents county agricultural commissioners, knowledgeable and experienced in alternative pest management techniques and pest prevention, control, and eradication.

(I) One member who represents the Department of Pesticide Regulation, with experience in pest management systems.

(J) One member who represents the State Department of Health Services, with experience in public health.

(4) The committee shall award funds based upon a competitive application process that meets the eligibility of fulfilling, and has the ability to fulfill, the objectives of this section.

(5) The approval of research proposals shall be made by a majority vote of the membership of the committee.

(d) For any proposals funded pursuant to this section, the department shall require reasonable accountability, including performance standards, periodic reports, deadlines, and payments conditioned on compliance with performance standards and deadlines.

(e) Funding for second and subsequent years of a multiyear award shall be contingent upon satisfactory completion by the grantee of the prior year grant awards.

(f) In order to facilitate the utilization of pest management practices and methods developed pursuant to this section, the secretary shall cooperate with qualified public and private entities to provide outreach consultation, information dissemination, and educational services to the agricultural community and other interested parties.

12798.6. The secretary shall establish a Pest Science and Technology Screening Committee, which shall function as a scientific peer review committee on exotic pest research proposals submitted pursuant to Section 12798. The screening committee shall conduct and provide a thorough evaluation of the scientific merit, environmental soundness, and economic viability of each proposal. The committee shall meet at the request of the secretary and after reviewing all current proposals shall make recommendations to the Pest Management Research Committee established pursuant to Section 12798 as to which proposals should be funded. The committee shall consist of the following members:

(a) Five members who represent California's public and private colleges and universities or private research community, each of whom possesses a degree in entomology, plant pathology, or environmental studies, and who are knowledgeable, technically qualified, and experienced in exotic pest biology and pest exclusion, detection, and eradication research.

(b) One member who represents the department, with experience in pest prevention.

(c) One member who represents the Office of Environmental Health Hazard Assessment, with experience in public health or toxicology.

(d) One member who represents the State Department of Health Services, with experience in public health.

### **Article 3. Exemptions**

12801. This chapter does not apply to any preparation, drug, or chemical which is intended to be used or sold solely for medicinal or cosmetic use by humans or to commercial feed as defined in Section 14925.

12802. A person may mix or dilute any registered pesticide in accordance with its registered labeling for his or her own use or for use in his or her own business without having become a registrant

pursuant to this chapter.

12803. The director, by regulation, may exempt from all or part of the requirements of this division a pesticide exempted pursuant to Section 25(b) of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136w (b)) as a pesticide that is determined to be of a character unnecessary to be subject to that act, if both of the following apply:

(a) The director individually evaluates each listed substance exempted pursuant to the federal authority and concurs in the decision by the United States Environmental Protection Agency Administrator to exempt that substance.

(b) The director excludes from the exempting regulation those specific requirements of this division that may otherwise be applicable that are necessary to protect the public health or the environment. Notwithstanding any other provision of law, the director shall retain authority to regulate any substance exempted pursuant to this section whether registered or not.

#### **Article 4. Registration**

12811. Every manufacturer of, importer of, or dealer in any pesticide, except a person that sells any raw material to a manufacturer of any pesticide or a dealer or agent that sells any pesticide that has been registered by the manufacturer or wholesaler, shall obtain a certificate of registration from the department before the pesticide is offered for sale.

12811.5. The director may rely upon any evaluations of previously submitted data to determine whether to accept an application for registration of a new pesticide product, an amendment to a registered pesticide product, or to maintain the registration of a pesticide product regardless of the ownership of the data previously evaluated. However, effective January 1, 2006, applicants will be subject to the following provisions:

(a) If an applicant for registration of a pesticide product, or an amendment of a registered pesticide product, including a registrant that desires to maintain its registration of a pesticide product after the director makes a formal re-evaluation request for additional data, does not submit its own data to fulfill a current data requirement imposed by the director and relies upon data that the applicant does not own or have written permission to rely upon that was submitted to the director by another entity after January 1, 1991, and meets the three criteria set forth in this subdivision, the applicant must either (i) obtain written permission from the data owner to rely on the data, (ii) formulate or obtain its product from a source that has data authorization from the data owner, or a source that complies with subdivision (c), or (iii) if the data meets the criteria set forth in paragraphs (1), (2), and (3), irrevocably offer to pay the data owner a share of the cost of producing the data and comply with the provisions of subdivision (d). The director may rely upon data submitted prior to January 1, 1991, or that does not meet the criteria set forth in paragraphs (1), (2), and (3) to support any application or comply with any formal re-evaluation request for additional data, without permission from the data owner.

An offer to pay, and a payment pursuant to that offer, shall only be required as to data not submitted by the applicant that meets the criteria set forth in paragraphs (1), (2), and (3). To be eligible for cost sharing pursuant to this section, the data must meet all of the following requirements:

(1) The data was required by the director in order to obtain, amend, or maintain the data owner's California registration or registrations for uses covered by the application, amendment, or formal re-evaluation request for additional data.

(2) There has been no arbitration award, data compensation, or data cost-sharing agreement pertaining to data supporting the product at the federal level pursuant to Section 3(c)(1)(F)(iii) or 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136a)(FIFRA), or, if an award or agreement exists, the use of data in California was excluded from compensation or cost sharing on its face.

(3) The data that fulfills a current requirement was submitted to the U.S. Environmental Protection Agency or the department no more than 15 years prior to the date of the applicant's California registration, application, or amendment or the formal re-evaluation request for additional data to which the registrant's reliance responds, provided that as to data submitted to the department as of August 1, 2005, in support of the first registration of a product, the applicable period shall be 17 years from the date of submission to the U.S. Environmental Protection Agency.

(b) If the director previously imposed a specific documented data requirement after January 1, 1991, to obtain, amend, or maintain the California registration of a pesticide product substantially similar to the applicant's product and that data requirement is not currently imposed in California for registration, amendment, or maintenance of the applicant's product, the applicant is further obligated to submit data to meet the requirement, obtain written permission from an owner of the data to rely upon the data, formulate or obtain its product from a source that has authorization from the data owner to rely upon the data or from a source that complies with subdivision (c), or, if the data meets the criteria set forth in paragraphs (1), (2), and (3), irrevocably offer to pay the data owner a share in the cost of producing the data and comply with the provisions of subdivision (c). An offer to pay, and a payment pursuant to that offer, shall only be required as to data not submitted by the applicant that meets the criteria set forth in paragraphs (1), (2), and (3). To be eligible for cost sharing pursuant to this section, the data must meet all of the following requirements:

(1) The data met a specific, documented requirement of the director to obtain, amend, or maintain the California registration of the data owner's pesticide product for a use covered by the applicant's application or amendment.

(2) There has been no arbitration award, data compensation, or data cost-sharing agreement pertaining to data supporting the product at the federal level pursuant to Section 3(c)(1)(F)(iii) or 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136a), or, if an award or agreement exists, the use of the data in California was excluded from compensation or cost sharing on its face.

(3) The data was submitted to the U.S. Environmental Protection Agency or Department of Pesticide Regulation by the data owner after January 1, 1991, and no more than 15 years prior to the date of the

applicant's California application for registration or amendment or the response to a formal specific document data requirement to which the registrant's reliance responds, provided that as to data submitted to the department as of August 1, 2005, in support of the first registration of a product, the applicable period shall be 17 years from the date of submission to the U.S. Environmental Protection Agency.

(c) An applicant may formulate its product from a source that does not have data authorization provided that source has submitted data to support the product or makes or has made an irrevocable offer to pay the data owner a share of the cost of producing the data required pursuant to subdivision (a) or (b) for the applicant's product and complies with or has made payment in accordance with the provisions of subdivision (d). In the event that the source has already reached a data compensation or cost-sharing agreement or there has been an arbitration award under FIFRA that excludes the right to rely on the data to satisfy the California requirement on its face, the source must make or have made a new irrevocable offer to pay a share of the cost of producing that data to support the applicant's product in California and comply with the provisions of subdivision (d).

(d) If an applicant is required to offer to pay a share in the cost of producing the data pursuant to subdivision (a) or (b), or if a source of product makes an offer pursuant to subdivision (c), the applicant or source must submit to the data owner upon application to the department an irrevocable offer to pay the data owner a share in the cost of producing the data and to comply with regulations promulgated under this subdivision to determine the amount and terms, if the parties cannot agree. If a data owner for which cost sharing is required under subdivision (a) or (b) cannot be identified from information readily available to the applicant, the applicant's obligation under subdivision (a) or (b) will be absolved if the data owner does not identify himself or herself to the applicant within 12 months after registration of the pesticide product. If within 12 months of registration, the data owner identifies himself or herself to the applicant and the applicant has not already made an irrevocable offer to pay to the data owner, or the applicant's source of product has not made an offer pursuant to subdivision (c), the applicant must do so promptly. In either event, the specific terms and amount of payments to be made shall be fixed by agreement between the applicant and the data owner, but determination of those amounts and terms shall not delay approval of the applicant's application.

If agreement cannot be reached about the terms and amount of payment required by this section at any time more than 90 days after issuance of an irrevocable offer to pay, either the applicant, source or data owner may initiate, or with the consent of all parties, join a proceeding under FIFRA, pursuant to regulations promulgated by the director pursuant to this statute. The purpose of this proceeding shall be to determine the amount due under this section. The director shall promulgate those regulations as emergency regulations within 60 days of the enactment of the bill that enacts this section. The regulations shall provide all of the following:

(1) Allow the proceeding authorized by this subdivision, upon mutual agreement of the parties, to be consolidated with dispute resolution under the federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. Sec. 136, et.seq.).

(2) Require that the decisionmaker consider, among other factors, that the data owner's exclusive right to sell the pesticide resulted

in the data owner recovering all or part of the costs of generating the data.

(3) Require that the parties to the proceeding share equally in the payment of the expenses thereof.

(e) If a data owner fails to participate in a procedure for reaching an agreement or in a proceeding as required by subdivision (d), or fails to comply with the terms of an agreement or decision conducted under subdivision (d), then that data owner forfeits his or her right to cost recovery as a result of the use of the data at issue.

(f) If the director finds that an applicant has failed to make an offer to pay as required under subdivision (a) or (b), or if its source of product has failed to make an offer pursuant to subdivision (c), or if an applicant or its source of product has failed to participate in a proceeding for reaching an agreement, or has refused to participate in a proceeding pursuant to subdivision (d), or has failed to comply with an agreement or to comply with an order, or to pay an award resulting from that proceeding, the director shall cancel the registration of the pesticide product in support of which the data was used in accordance with the provisions of subdivision (g), notwithstanding the provisions of Section 12825.

(g) If the applicant subject to subdivision (a) or (b) fails to comply with the provisions of this article, the data owner shall notify the director of the specific provision of noncompliance and provide proof of notification to the applicant of its claim of noncompliance. All parties shall have 30 days from the date of receipt of notification by the director to submit written evidence or arguments to the director regarding the claim and any defenses thereto. The director shall provide a written finding within 60 days of the deadline for submission as to the claim and the resulting consequences.

(h) No hearing or live testimony shall be conducted under subdivision (g) and this proceeding shall not be used as mechanism to prevent or delay the registration or payment for cost sharing as determined by this article. The finding of the director shall be final and conclusive, except that any party aggrieved by such a finding may seek review within 30 days of the finding pursuant to Section 1094.5 of the Code of Civil Procedure.

(i) In lieu of seeking a determination by the director and cancellation of the registration pursuant to subdivision (f), the data owner may bring an action in any California court of competent jurisdiction against the applicant to enforce the obligations of that party set forth in the provisions of this section.

(j) No cost sharing as provided in subdivisions (a), (b), and (c) shall be required to support an application for annual renewal of a pesticide product registration, provided this provision shall not authorize renewal of a product registered prior to the effective date of this section if that registration is declared to have been unlawfully issued by a court of competent jurisdiction.

(k) The Department of Pesticide Regulation shall make available in the public domain its index of data submitted in support of registration applications, the ownership of that data, and the date it was submitted to California.

12812. (a) The director shall establish, by regulation, fees for the Department of Pesticide Regulation's registration program, as established pursuant to this division. The fees shall include, but

are not limited to, the following:

- (1) Annual fees for each product submitted for registration.
- (2) Penalties for the late payment of registration fees.
- (3) Fees for amendments to registered products.

(b) The fees established pursuant to this section may include costs for administration and overhead in connection with administering the fees.

(c) The fees established pursuant to this section shall be set so that the total revenue collected each fiscal year is sufficient to support the expenditure levels for the registration program contained in the annual Budget Act.

(d) Funds collected pursuant to this section shall be deposited in the Department of Pesticide Regulation Fund, and shall be available for expenditure by the department, upon appropriation by the Legislature, for the purposes of carrying out the department's pesticide registration program, as established pursuant to this division.

(e) The regulations adopted pursuant to this section, or any amendment or readoption thereto, shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, the adoption, amendment, readoption, or repeal of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other provision of law, the regulations shall remain in effect until amended by the director.

12814. Any county, state, or federal officer or employee who sells any pesticide at cost is not required to pay any fee that is imposed by this chapter.

12815. If a manufacturer, importer, or dealer in pesticides that applies for registration of pesticides has complied with this chapter and the regulations that are adopted pursuant to it, the director shall register each pesticide that is sought to be registered and issue a certificate of registration to the applicant that authorizes the manufacture and sale of the pesticide in this state.

12816. If the director finds that registration cannot be permitted due to noncompliance with this chapter or the regulations which are adopted pursuant to it, he or she may, after reasonable notice, call a hearing for the purpose of determining whether the application shall be reconsidered or denied.

12817. Every registration expires on December 31st of each year except when renewal is applied for within one month thereafter in the manner which is provided for registration.

12818. If renewal is not applied for within one calendar month after the expiration of a registration, a penalty as prescribed by the director pursuant to Section 12812 shall be added to the registration fee.

12819. A penalty shall not be collected if the person that makes application for renewal of registration makes an affidavit that no business was done during the period of nonregistration.

12820. The payment of any renewal fee or penalty is not a bar to any prosecution for doing business without proper registry.

12821. Each applicant for a certificate of registration shall also file a statement of every brand, trademark, and kind of pesticide that the applicant intends to manufacture or sell, the correct name and percentage of each active ingredient in the pesticide, and the total percentage of inert ingredients that are contained in the pesticide. The director, whenever he or she deems it necessary for the effective administration of this chapter, may require the submission of the complete formula for the pesticide.

12822. A supplemental application for registration of any additional pesticide may be submitted at any time without payment of the penalty required by Section 12818.

12823. A change in the name or percentage, or both, of an inert ingredient is not a change in composition of the pesticide that requires a new registration unless the change in inert material results in a change in the use or application of the pesticide.

12824. The director shall endeavor to eliminate from use in the state any pesticide that endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for which it is sold, or is misrepresented. In carrying out this responsibility, the director shall develop an orderly program for the continuous evaluation of all pesticides actually registered.

Before a substance is registered as a pesticide for the first time, there shall be a thorough and timely evaluation in accordance with this section. Appropriate restrictions may be placed upon its use including, but not limited to, limitations on quantity, area, and manner of application. All pesticides for which renewal of registration is sought also shall be evaluated in accordance with this section.

The director may establish specific criteria to evaluate a pesticide with regard to the factors listed in Section 12825. The department may establish performance standards and tests that are to be conducted or financed, or both conducted and financed, by the registrants, applicants for registration, or parties interested in the registration of those pesticides.

12825. Pursuant to Section 12824, the director, after hearing, may cancel the registration of, or refuse to register, any pesticide:

(a) That has demonstrated serious uncontrollable adverse effects either within or outside the agricultural environment.

(b) The use of which is of less public value or greater detriment to the environment than the benefit received by its use.

(c) For which there is a reasonable, effective, and practicable alternate material or procedure that is demonstrably less destructive to the environment.

(d) That, when properly used, is detrimental to vegetation, except weeds, to domestic animals, or to the public health and safety.

(e) That is of little or no value for the purpose for which it is intended.

(f) Concerning which any false or misleading statement is made or implied by the registrant or his or her agent, either verbally or in

writing, or in the form of any advertising literature.

(g) For which the director determines the registrant has failed to report an adverse effect or risk as required by Section 12825.5.

(h) If the director determines that the registrant has failed to comply with the requirements of a reevaluation or to submit the data required as part of the reevaluation of the registrant's product.

(i) That is required to be registered pursuant to the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.) and that is not so registered.

In making a determination pursuant to this section, the director may require those practical demonstrations that are necessary to determine the facts.

12825.5. (a) If, during the registration process or at any time after the registration of a pesticide, the registrant has factual or scientific evidence of any adverse effect or risk of the pesticide to human health, livestock, crops, or the environment that has not been previously submitted to the department, the registrant shall submit the evidence to the director in a timely manner. All such information, including, but not limited to, that information required under Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136d (a)(2)), shall be submitted to the director.

(b) The director may adopt regulations that are reasonably necessary to carry out this section.

12826. If the director has reason to believe that any of the conditions stated in Section 12825 are applicable to any registered pesticide and that the use or continued use of that pesticide constitutes an immediate substantial danger to persons or to the environment, the director, after notice to the registrant, may suspend the registration of that pesticide pending a hearing and final decision. If an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is not filed within 10 days from the date of the notice, the suspension shall be terminated.

12827. The director may cancel a certificate of registration, or, refuse to issue certification to any manufacturer, importer, or dealer in any pesticide that repeatedly violates any of the provisions of this chapter or the regulations of the director.

The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The director has all the powers that are granted therein.

12827.5. Whenever the director cancels the registration of, or refuses to register, any pesticide currently registered by the United States Environmental Protection Agency, the director shall provide the applicant or registrant with the basis for the decision and the reasons why a conclusion different from, contrary to, or inconsistent with, the conclusion and findings of the United States Environmental Protection Agency was reached.

12828. Action by the director pursuant to Sections 12824, 12825, 12826, or 12827 is not a condition precedent to the institution of any action to prosecute a violation of the chapter.

12828.5. (a) A registrant at any time may request that the registration of any of its pesticides be voluntarily canceled. The request shall be in writing and shall include a waiver of the registrant's right to a hearing on the cancellation.

(b) The director shall mail a notice of cancellation of registration of the pesticides to the registrant. The notice shall specify the effective date of the cancellation.

(c) The pesticides for which the registration is canceled may be sold and possessed as if the product's registration was not renewed unless the director determines that protection of human health or the environment require otherwise, in which case the cancellation notice shall specify the conditions under which the product may be sold or possessed after cancellation of its registration.

12829. If a person has a research authorization for a pesticide issued pursuant to Section 6260 of Title 3 of the California Code of Regulations for the purpose of testing the pesticide, and the produce on which the pesticide was tested is required to be destroyed, any actual costs incurred by the commissioner to investigate and confirm the destruction of the produce shall be paid for by the person who has the research authorization. The costs charged by the commissioner shall not exceed one hundred twenty-five dollars (\$125) per test site. The board of supervisors of each county may adopt a fee schedule to cover the commissioner's costs under this section.

12832. (a) Notwithstanding any other provision of this chapter, alfalfa and all vegetable crops, when grown for seed production, with the exception of corn, beans, pumpkin, and peas, shall be considered a nonfood and nonfeed site of pesticide use for the purpose of pesticide registration. In order to be determined to be a nonfood or nonfeed site for the purposes of this section, the following conditions shall be met:

(1) All seed screenings shall be disposed of in such a way that they cannot be distributed or used for food or feed. The seed conditioner shall keep records of screenings disposal for three years from the date of disposal and shall furnish the records to the director upon request. Disposal records shall consist of documentation from a controlled waste disposal site, incinerator, cogeneration plant, composting facility, or other equivalent disposal site.

(2) No portion of the seed plant, including, but not limited to, green chop, hay, pellets, meal, whole seed, cracked seed, or seed screenings shall be used or distributed for food or feed purposes.

(3) All seed crops grown on a nonfood or nonfeed site in this state, or conditioned in this state, shall bear a tag or container label that forbids the use of the seed for human consumption or animal feed.

(4) No seed grown on a nonfood or nonfeed site in this state, or conditioned in this state, may be distributed for human consumption or animal feed.

(b) Nothing in this section prevents the department from imposing conditions for alfalfa seed sites in addition to those contained in this section, or from rescinding any current label requirements for pesticides approved for alfalfa seed production.

(c) Nothing in this section exempts the department from reviewing worker safety evaluations with regard to the use of pesticides

involving crops specified in subdivision (a).

(d) A violation of any condition specified in subdivision (a) by the person responsible for the use of the pesticide is a violation of this chapter, and is subject to the civil and criminal penalties and injunctive relief provisions specified in Article 12 (commencing with Section 12996). A violation of any condition specified in subdivision (a) by the person responsible for the disposition of seed screenings is a violation of Chapter 6 (commencing with Section 14901) and is subject to enforcement by the Department of Food and Agriculture.

12833. (a) Notwithstanding any other provision of this chapter, the director may issue a certificate of emergency registration for a pesticide if all of the following conditions are met:

(1) The pesticide is currently registered by the United States Environmental Protection Agency pursuant to Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136a) for the use specified in subparagraph (B) of paragraph (5).

(2) The active ingredient of the pesticide was previously registered under Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136p) in order to respond to an emergency pest control problem.

(3) The applicant demonstrates to the department that the pesticide qualifies for registration pursuant to Section 12815 and the department determines that it is probable that the pesticide will receive registration pursuant to this division within one year.

(4) The applicant for emergency registration submits to the director all data required for registration pursuant to this division and the regulations adopted pursuant to this division.

(5) The director makes both of the following findings based on substantial evidence:

(A) The use of the pesticide during the period of emergency registration will not pose a potential significant risk to public health or safety or to the environment. In making this finding, the director shall review the risks associated with the use of the pesticide and determine if those risks are significant given the limitations that will be imposed on the use of the pesticide during the emergency registration period.

(B) The emergency registration of the pesticide is necessary in order to effectively respond to an emergency pest control problem. For purposes of this subparagraph, an emergency pest control problem shall be deemed to exist if the director finds that a pest infestation is present in the state for which no feasible pest control method is available that is a reasonable alternative to the use of the pesticide for which the emergency registration is requested. In making a determination pursuant to this subparagraph, the director shall identify the pest infestation that is the subject of the emergency, describe the pest control methods that have been demonstrated as ineffective against the infestation or that are otherwise not reasonable alternatives, and summarize the evidence that demonstrates that the pesticide for which emergency registration has been requested is efficacious against the pest infestation.

(b) At the same time as the director issues a certificate of emergency registration for a pesticide pursuant to this section, the director shall establish limitations on the use of the pesticide that the director determines are necessary to prevent a potential

significant risk to human health or safety or the environment. The director shall limit the use of any pesticide granted a certificate of emergency registration to the control of the emergency pest infestation described in subparagraph (B) of paragraph (5) of subdivision (a).

(c) A certificate of emergency registration may be issued for a period not to exceed one year and may be renewed one time only.

(d) A certificate of emergency registration may not be renewed unless the director does all of the following:

(1) Publishes a notice that an application for renewal of the certificate of emergency registration has been received.

(2) Makes all of the following findings:

(A) That the findings made by the director in support of the certificate of emergency registration pursuant to paragraph (5) of subdivision (a) remain valid.

(B) That there are no indications that the pesticide, when used in accordance with applicable label instructions and the limitations established pursuant to subdivision (b), poses a significant risk to worker safety and health. The director shall base this finding on a review of the data required for registration pursuant to this division, experience with the use of the pesticide during the period the certificate of emergency registration was in effect, and any other information the director has required the applicant to submit or received from the applicant or any other person.

(C) That the failure to complete the registration of the pesticide during the period the certificate of emergency registration was in effect is due to circumstances that were not under the control of the applicant, and that the data required for registration pursuant to this division is complete and meets all of the requirements of this division and the regulations adopted pursuant to this division.

(3) Convenes a workshop, if one is requested by any interested or aggrieved person, concerning the reasons for the renewal of the certificate of emergency registration. The director shall review information and comments provided by persons who attend the workshop and take that information and those comments into account in determining if the certificate of emergency registration may be renewed.

(e) The director shall immediately revoke any certificate of emergency registration issued pursuant to this section if either of the following occurs:

(1) The United States Environmental Protection Agency suspends or cancels the registration of the pesticide or the particular use of the active ingredient in the pesticide that allows it to be used in the emergency pest infestation described in subparagraph (B) of paragraph (5) of subdivision (a).

(2) The director determines during a subsequent review of data required for registration pursuant to this division that the use of the pesticide will pose a potential significant risk to the public health or safety or to the environment.

12836. (a) The director, by January 1, 1999, shall implement a program for the expedited registration of or for the expedited amendment of the registration of any pesticide classified by the United States Environmental Protection Agency as a "public health pesticide" or "antimicrobial pesticide" and that is determined by the director to have human health protection benefits that warrant eligibility for expedited processing. Nothing in this section

limits the director's authority to provide expedited registration for any other pesticide product.

(b) For the purposes of this section, "expedited registration" and "expedited amendment of the registration" mean that the director shall review an application for registration or for amendment of a registration concurrently in time with the review conducted by the United States Environmental Protection Agency. This section shall not be construed to require or authorize modification of any guidelines, protocols, or standards applicable to the review of an application for registration.

12836.5. The director shall accept applications for registration of pesticide products containing a new active ingredient concurrently with the application to the United States Environmental Protection Agency. The application for registration must include all data and information that meet the requirements of this chapter.

12836.6. The director shall, with the assistance of the Legislative Analyst, conduct a study to consider more carefully the consequences of data-sharing agreements required under Sections 12011.5 and 12836.5 and the volume of high-hazard pesticides sold in California. The report shall be submitted to the Legislature no later than December 31, 2008.

12837. (a) The director may waive the submission or review, or both, of efficacy data developed by a registrant as a prerequisite for registration for any antimicrobial pesticide product if all of the following conditions have been met with respect to each antimicrobial pesticide product:

(1) The director finds that the United States Environmental Protection Agency's guidelines, protocols, and standards of review in existence at the time the product was reviewed by the United States Environmental Protection Agency are consistent with, and no less stringent than, California guidelines, protocols, and standards and generally accepted scientific practices.

(2) The director finds that, with respect to the particular antimicrobial pesticide product reviewed under this section, the United States Environmental Protection Agency actually implemented the guidelines, protocols, and standards of review for which the director made the required finding pursuant to paragraph (1). In making this finding, the director may request any relevant studies or documentation from the registrant.

(b) Nothing in this section shall be construed as a limitation on the director to request or to review any efficacy data or studies or to subject any product to testing, at any time.

#### **Article 4.5. Assessments**

12841. (a) It is unlawful for a person to sell for use in this state any pesticide products that have been registered by the director for which the mill assessment established by this article, and the regulations adopted pursuant to it, is not paid at the times specified in Section 12843.

(b) Except as provided in subdivision (d), every person who sells for use in this state a pesticide product that has been registered by

the director shall pay to the director the applicable assessment. Those sales expressly include all sales made electronically, telephonically, or by any other means that result in a pesticide product being shipped to or used in this state. There is a rebuttable presumption that pesticide products that are sold or distributed into or within this state by any person are sold or distributed for use in this state.

(c) (1) Upon application of a registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for a pesticide, and is sold in combination, and whether the mill assessment under this article shall be on the pesticide value only, when the product is designed, developed, and manufactured, and sold primarily for other than a pesticide use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than a pesticide use, the assessment provided by this article shall be paid on the equivalent percentage of the sales price of the active ingredients of the pesticide product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the pesticide portion to the total sales price of the combination product.

(2) For purposes of this section, "active ingredient" means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.

(d) Assessments provided for in this article for sales of registered pesticides that are sold for use in this state shall be paid by the registrant except as follows:

(1) In those cases where the registrant did not first sell the pesticide into or within this state or have actual knowledge, at the time of its sale, that the pesticide would be sold for use in this state, the assessment shall be paid by the licensed pesticide broker, licensed pest control dealer, or other person who first sold the pesticide for use in this state.

(2) A person is not required to pay an assessment on registered products that are labeled only for use in further manufacturing or formulating of pesticides.

(e) It has been and continues to be the intent of the Legislature that this division requires the department to register all pesticides prior to their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control the use of pesticides in accordance with this division. Except as provided in Section 12841.1, the department shall continue to collect the assessment as provided in this article at the same rate on all registered agricultural and registered nonagricultural pesticides.

(f) (1) The mill assessment shall be paid at the following rates per dollar of sales for all sales of pesticides for use in this state:

(A) From January 1, 1998, to March 31, 1999, inclusive, the rate shall be 15.15 mills (\$0.01515) plus any additional assessment authorized by Section 12841.1.

(B) From April 1, 1999, to December 31, 2002, inclusive, the rate shall be 17.5 mills (\$0.0175) plus any additional assessment authorized by Section 12841.1.

(C) From January 1, 2003, to December 31, 2003, inclusive, the rate shall be 17.5 mills (\$0.0175).

(D) For all transactions on or after January 1, 2004, the actual

rate shall be that set by regulations adopted by the director at a rate adequate to support the department's annual expenditures authorized in the annual Budget Act and provide a prudent reserve. The rate set by the director shall be no greater than 21 mills (\$0.021). However, if regulations are not adopted before a payment is due, payment shall be made at the rate of 17.5 mills (\$0.0175), and, upon adoption of regulations, payment of any additional amount due shall be made.

(2) The regulations adopted pursuant to this section, or any amendment thereto, shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, the adoption, amendment, readoption, or repeal of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other provision of law, the regulations shall remain in effect until amended by the director. The director shall make available to the public, upon the adoption of an emergency regulation establishing a new rate, the information upon which the director has calculated, based, or determined the new rate.

(g) The revenue collected pursuant to this section shall be deposited in the Department of Pesticide Regulation Fund and distributed as follows:

(1) Notwithstanding Sections 2282 and 12784, the director shall pay, in accordance with the criteria set forth in Section 12844, the following amounts to the counties as reimbursement for costs incurred by the counties in the administration and enforcement of Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), Chapter 3.4 (commencing with Section 14090), and Chapter 3.5 (commencing with Section 14101):

(A) From January 1, 1998, to March 31, 1998, inclusive, five-eighths of the money received during that period pursuant to this section.

(B) From April 1, 1998 to June 30, 2004, an amount equal to the revenue derived from 6 mills (\$0.006) per dollar of sales for all pesticide sales for use in this state.

(C) Beginning July 1, 2004, an amount equal to the revenue derived from 7.6 mills (\$0.0076) per dollar of sales for all pesticide sales for use in this state.

(2) All funds not otherwise distributed pursuant to this subdivision shall remain in the Department of Pesticide Regulation Fund and shall be available for expenditure, upon appropriation, to support the department's operations.

12841.1. (a) The director may collect an assessment, in addition to the mill assessment collected pursuant to Section 12841, for all pesticide sales for use in this state except for sales for use in this state of pesticides labeled solely for home, industrial, or institutional use. The director may only collect up to an additional three-fourths mill (\$0.00075) per dollar of sales, in addition to the rate established pursuant to Section 12841, if necessary to fund, or augment the funding for, an appropriation to the Department of Food and Agriculture to provide pesticide consultation to the department pursuant to Section 11454.2. The necessity of this additional assessment shall be determined by the Secretary of Food and Agriculture, in consultation with the director, on an annual

basis after consideration of all other revenue sources, including any reserves, which may be appropriated for this purpose. The secretary's written determination, including a request for a specified additional assessment and the basis for that request, shall be provided to the director by a time and in a manner prescribed by the director.

(b) The revenue collected pursuant to this section shall be deposited monthly in a separate account in the Department of Food and Agriculture Fund. These revenues shall be expended only by the Department of Food and Agriculture, upon appropriation, to provide consultation to the department pursuant to Section 11454.2. No funds may be expended prior to the execution of a memorandum of understanding pursuant to subdivision (b) of Section 11454.2. The consultation activities to be undertaken by the Department of Food and Agriculture are limited solely to those specifically authorized in the memorandum of understanding executed pursuant to Section 11454.2. These funds may not be expended for scientific risk assessment activities. The department shall be reimbursed from the Department of Food and Agriculture Fund for the department's revenue collection activities. If the director determines that a person is entitled to a refund of mill assessment funds that were collected pursuant to this section, the director shall inform the Secretary of Food and Agriculture of the amount of the refund due, which shall be reimbursed from the Department of Food and Agriculture Fund.

12841.2. (a) The Department of Pesticide Regulation shall create a program to conduct outreach and education activities for worker safety, environmental safety, school safety, and proper pesticide handling and use, to include, but not be limited to, the following issues and criteria:

(1) The program shall encompass all communities, including urban, rural, and suburban communities.

(2) All potential exposure opportunities, including household, industrial, and agricultural uses.

(3) Rights and procedures of workers and those potentially exposed to pesticides and how to file confidential complaints.

(b) The program shall be conducted in accordance with the department's environmental justice guidelines.

(c) The director shall appoint an advisory committee of interested stakeholders to provide input on the development and implementation of the program.

(d) This program shall compliment and not replace other outreach efforts currently in place not dealing with the issues addressed within this program.

12842. Every person who sells for use in this state any pesticide products that have been registered by the director shall maintain in this state, or with the director's permission at another location, an accurate record of all transactions subject to assessment for four years. The records are subject to audit by the director and shall clearly demonstrate proof of payment of all applicable assessments for each registered pesticide product sold for use in this state.

12843. The payments required by this article, together with a return in a form prescribed by the director, shall be made quarterly one calendar month after March 31, June 30, September 30, and December 31 of each year. For any delinquency in making a return, or

any deficiency in payment, the director shall add to the delinquent payment a penalty of 10 percent of the amount that is due.

12844. The director and the county agricultural commissioners shall jointly develop regulations specifying the criteria to be used in allocating pesticide mill assessment funds to the counties based upon each county's pest control activities, costs, workload, and performance. After providing public notice, the director shall adopt those regulations. The criteria to be used in allocating the funds to counties shall include, but not be limited to, all of the following:

(a) The effectiveness of the pesticide use enforcement program in each county.

(b) The number, comprehensiveness, and effectiveness of pest control inspections performed in each county.

(c) The number of licensed pest control dealers located in each county. The number of licensed agricultural pest control advisers, pest control businesses, and pest control aircraft pilots registered in each county. The number of structural pest control operators providing notice of work to each county.

(d) The work hours expended in each county by county personnel who are licensed, or working under the supervision of county personnel licensed, in pesticide regulation or environmental monitoring and investigation.

(e) The total amount of dollars expended by each county relating to pesticide regulatory activities.

(f) The total number of private applicator certificate holders in each county.

(g) The total pounds of pesticides reported used in each county.

12844.5. Notwithstanding Section 12784, the funds paid to the counties under Section 12844 shall also be considered as reimbursement for costs incurred by the counties in the administration and enforcement of Chapter 7 (commencing with Section 15201).

12845. (a) The director may adopt regulations that require persons subject to this article to provide information determined by the director to be necessary to enable the director to perform the audit authorized pursuant to Section 12842 and to carry out other powers or duties under this division.

(b) The regulations adopted pursuant to this section may include, but are not limited to, a requirement that a person subject to this article provide the director with information on the quarterly dollar sales of each registered pesticide sold for use in this state and the quarterly volume of each registered pesticide sold for use in this state.

12846. The Food Safety Account is hereby created in the Department of Pesticide Regulation Fund. The funds in the account shall be used, upon appropriation, for the purposes of Sections 12535, 12797, 12798, 12979, 13134 and 13135 of this code and Section 110495 of the Health and Safety Code.

12846.5. Sufficient moneys from the Department of Pesticide Regulation Fund, as determined by the Director of Pesticide Regulation, shall be transferred to the Food Safety Account for the

purposes of Section 12846, except that no fees or assessments deposited into the fund shall be transferred to the account and used for nonregulatory purposes.

12847. Sales invoices for pesticides first sold into or within this state by a registrant, pesticide broker, pest control dealer, or other person subject to this article shall show that the assessment specified in Sections 12841 and 12841.1 will be paid by the registrant, broker, dealer, or person, respectively. All other sales invoices for pesticides sold into or within this state, except retail sales of those nonagricultural pesticides labeled only for home, industrial, or institutional use shall show as a comment on the invoice that the assessment will be paid, and may show an amount or rate that represents the assessment. However, only the person who actually will pay the assessment may show the amount or rate of the assessment as a line item on the sales invoice.

## **Article 5. Labeling and Warranty**

12851. The registrant of any pesticide shall attach to each separate lot, and each separate, finished, sealed, or closed container or package of pesticide that the registrant intends to sell within this state, a plainly printed label, that states all of the following:

(a) The name, brand, or trademark, if any, under which the pesticide is sold.

(b) The name and address of the registered manufacturer, importer, or vendor.

12852. The registrant of any pesticide that is sold or delivered to a consumer in this state shall furnish printed directions for use, and dilution if any, upon the label, or shall enclose the printed directions in each container or package of the pesticide.

12853. A registrant of pesticides may print upon the label of any sealed or closed container or package of pesticide that the registrant intends to sell within this state, or upon the label of any opened lot from which sales have been authorized by the director, such limitations of warranty with respect to the use of the pesticide, as the registrant may consider proper.

12854. No limitations of warranty by the seller shall exclude or waive either of the following implied warranties:

(a) That the pesticide corresponds to all claims and descriptions that the registrant has made in respect to it in print.

(b) That the pesticide is reasonably fit for use for any purpose for which it is intended according to any printed statement of the registrant.

12855. Except as otherwise provided in this article, the registrant is not liable for any injury or damage that is suffered solely by reason of any of the following:

(a) The use of the pesticide for a purpose that is not indicated by the label.

(b) The use of the pesticide contrary to the printed directions of

the registrant or seller.

(c) The breach of any warranty by the registrant that is not expressly printed on the label.

12856. Except as otherwise provided in Section 12857, a pesticide shall not be sold unless it is in a registrant's sealed or closed container or package.

12857. The director, pursuant to regulations prescribed by him or her, may authorize sales of pesticides to be made out of a registrant's opened but properly labeled lot, container, or package. The director shall serve notice of the proposed action by depositing a copy of it in a United States post office, inclosed in a sealed envelope with postage prepaid and addressed to each registrant at his or her last address on file with the department. The director shall allow 15 days, during which time any protest may be filed.

12858. The statement of ingredients in any pesticide that is intended and sold for internal administration to animals may be given in terms of dosage in lieu of percentage by weight as required by Article 4 (commencing with Section 12811) and Article 6 (commencing with Section 12881).

12859. The director shall adopt regulations governing the labeling of service containers. The labeling regulations shall not apply to containers used by a person engaging in the business of farming when the containers are used on the property that the person is farming. The regulations shall provide that the labeling only include the following:

(a) The name and address of the person or firm responsible for the container.

(b) The identity of the pesticide in the container.

(c) The word "DANGER", "WARNING", or "CAUTION" in accordance with the label on the original container.

## **Article 6. Misbranding**

12881. A pesticide is misbranded in any of the following cases:

(a) The package or label bears any false or misleading statement, design, or device regarding the article or any ingredient or substance that is contained in it.

(b) The package or label is falsely branded as to the place of manufacture or production of the pesticide.

(c) It is an imitation of, or offered for sale under the name of, another article.

(d) It is labeled or branded so as to deceive or mislead the purchaser.

12882. A pesticide is also misbranded in any of the following cases:

(a) The contents of the package as originally put up have been removed in whole or in part and other contents placed in the package.

(b) The contents of the package are of a quality below that of the guarantee on the label, on the application for registration of the

pesticide, or of the analysis of the representative sample delivered in connection with the application for registration of the pesticide.

(c) If the contents of any package of a pesticide is stated in terms of weight or measure, and the weight or measure is not plainly and correctly stated on the outside of the package.

(d) The label does not conform to the registered label approved by the director under the standards of this division.

12883. Except as otherwise provided in Section 12884 , a pesticide is also misbranded when the label fails to state one of the following:

(a) The name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide.

(b) The name of each active ingredient, together with the name of each and the total percentage of the inert ingredients, if there are any, in the pesticide.

A pesticide that is sold only as a spray adjuvant is not misbranded if the total percentage of the constituents ineffective as a spray adjuvant is stated on the label without mention of the terms "active ingredient" or "inert ingredient" in lieu of one of the options required by this section.

12884. If the preparation is highly toxic to humans, as determined by regulations of the director, a pesticide is misbranded if the label fails to state the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

12885. In addition to the other provisions of this article, a spray adjuvant is misbranded if the label fails to state the type or function and the names of the principal functioning agents. If more than three functioning agents are present, only the three principal ones need be named.

## **Article 7. Adulteration**

12911. A pesticide is adulterated in any of the following cases:

(a) Its strength or purity falls below the standard or quality that it is represented to have.

(b) Any ingredient that is necessary to its effectiveness has been wholly or in part abstracted or omitted in its manufacture, or other materials substituted for that ingredient.

(c) It is intended for use on vegetation and contains any substance that is seriously injurious to vegetation, except weeds, if used according to the directions that are furnished with it.

## **Article 8. Analysis**

12931. The director may take samples of pesticides, make analyses or examinations of them, and make such investigations as are necessary for the full enforcement of this chapter.

## **Article 9. Seizure**

12961. The director may seize and quarantine any pesticide that is adulterated, misbranded, or detrimental to agriculture or to the public health, or which is otherwise not in conformity with any provision of this chapter.

## **Article 10. Recommendations and Usage**

12971. No recommendation shall be in conflict with the registered labeling for the product being recommended.

12972. The use of any pesticide by any person shall be in such a manner as to prevent substantial drift to nontarget areas.

12973. The use of any pesticide shall not conflict with labeling registered pursuant to this chapter which is delivered with the pesticide or with any additional limitations applicable to the conditions of any permit issued by the director or commissioner.

12974. Failure of a person using a pesticide to possess a written recommendation shall create a rebuttable presumption that he or she has assumed responsibility for the recommendation.

12975. A person making a written recommendation does not incur an obligation to insure that the actual use follows his or her recommendation.

12976. The director may adopt regulations to govern the possession, sale, or use of any pesticide which the director finds necessary to carry out the purposes of Division 6 (commencing with Section 11401) or this division.

12977. The director, and the commissioner of each county under the direction and supervision of the director, shall enforce the provisions of this article and the regulations adopted pursuant to it.

12978. Pesticide applications on public property which take place on school grounds, parks, or other public rights-of-way where public exposure is foreseeable shall be posted with warning signs. The signs shall be in English and Spanish and shall contain a warning that the area has been treated with a pesticide and that individuals are not to enter the area.

(a) This section shall apply to all pesticide applications which have worker reentry intervals of at least 24 hours.

(b) Posting shall be accomplished immediately prior to pesticide applications, and the signs shall be removed within 24 hours after the expiration of the reentry interval.

(c) Signs shall be posted at regular intervals and at all regular points of public entry.

(d) The agency with responsibility for the property where the

pesticide application is to take place shall post the warnings required by this section.

(e) The responsible agency may substitute a barrier for the warning signs to exclude public exposure to a treated area.

(f) This section does not apply to pesticide applications by the Department of Transportation on public highway rights-of-way.

12979. A pesticide use report shall be submitted to the commissioner or director on a form and in a manner prescribed by the director. The data from the pesticide use reports shall be considered in setting priorities for food monitoring, pesticide use enforcement, farm worker safety programs, environmental monitoring, pest control research, public health monitoring and research, and similar activities by the department, or by the department in cooperation with other state, regional, or local agencies with appropriate authority.

## **Article 10.5. Pesticides and Worker Safety**

12980. The Legislature hereby finds and declares that it is necessary and desirable to provide for the safe use of pesticides and for safe working conditions for farmworkers, pest control applicators, and other persons handling, storing, or applying pesticides, or working in and about pesticide-treated areas.

The Legislature further finds and declares that the development of regulations relating to pesticides and worker safety should be the joint and mutual responsibility of the Department of Food and Agriculture and the State Department of Health Services.

The Legislature further finds and declares that in carrying out the provisions of this article, the University of California, the Department of Industrial Relations, and any other similar institution or agency should be consulted.

12981. The director shall adopt regulations to carry out the provisions of this article. Such regulations shall include, but are not limited to, all of the following subjects:

(a) Restricting worker reentry into areas treated with pesticides determined by the director to be hazardous to worker safety by using either or both of the following:

(1) Time limits.

(2) Pesticide residue levels on treated plant parts determined by scientific analysis to not be a significant factor in cholinesterase depression or other health effects.

When the director has adopted regulations pursuant to both paragraphs (1) and (2), the person in control of the area treated with the pesticide shall have the option of following regulations adopted pursuant to either paragraph (1) or (2). If the person in control of the area treated with the pesticide chooses to follow regulations adopted pursuant to paragraph (2), the director may establish and charge the person a fee necessary to cover any costs of analysis or costs incurred by the director or commissioner in carrying out regulations adopted pursuant to paragraph (2). The regulations shall include a procedure for the collection of the fee, and the fee shall not exceed actual cost.

(b) Handling of pesticides.

(c) Hand washing facilities.

(d) Farm storage and commercial warehousing of pesticides.

(e) Protective devices, including, but not limited to, respirators and eyeglasses.

(f) Posting, in English and Spanish, of fields, areas, adjacent areas or fields, or storage areas.

The State Department of Health Services shall participate in the development of any regulations adopted pursuant to this article. Such regulations that relate to health effects shall be based upon the recommendations of the State Department of Health Services. The original written recommendations of the State Department of Health Services, any subsequent revisions of those recommendations, and the supporting evidence and data upon which the recommendations were based shall be made available upon request to any person.

12982. The director and the commissioner of each county under the direction and supervision of the director, shall enforce the provisions of this article and the regulations adopted pursuant to it. The local health officer may assist the director and the commissioner in the enforcement of the provisions of this article and any regulations adopted pursuant to it. The local health officer shall investigate any condition where a health hazard from pesticide use exists, and shall take necessary action, in cooperation with the commissioner, to abate the condition. The local health officer may call upon the State Department of Health Services for assistance pursuant to Section 105210 of the Health and Safety Code.

12985. Any person who orders an employee to enter an area posted with a warning sign in violation of any worker safety reentry requirements promulgated pursuant to this article by the director is guilty of a misdemeanor. A violation of this article affecting any worker or workers constitutes a separate offense for each affected worker.

12986. (a) The director shall approve programs for training persons who handle or apply pesticides in aerial pest control operations. The training programs shall be consistent with, but not limited to, this article and may include participation by trainees in field practices or exercises dealing with the safe handling and application of pesticides and may include performance measurement of the practices and exercises.

(b) The approved training programs shall be conducted by industry qualified instructors. Industry qualified instructors are persons approved by the director.

(c) All persons who successfully complete an approved training program shall be issued a certificate of completion by industry qualified instructors, which shall be available for inspection by the director or a commissioner, or his or her representative. When the person completing an approved training program attended the program at the request or expense of the person's employer, the employer shall be provided a copy of the certificate of completion, which also shall be available for inspection by the director or a commissioner, or his or her representative.

12987. The director shall require registrants of pesticides to submit the data necessary to perform the director's duties under this article.

12988. No pesticide may be registered or reregistered unless the director determines that the registrant has complied with this article.

## **Article 11. Violations**

12991. It is unlawful for any person, individually or through another, in connection with any substance or mixture of substances included within the scope of this chapter, to do any of the following:

- (a) Make any material or substantial misrepresentation.
- (b) Make any false promises of a character likely to influence, induce, or deceive.
- (c) Engage in illegitimate business or dishonest dealing.
- (d) Cause to be published or distributed any false or misleading literature, or cause to be displayed any false or misleading advertisement.
- (e) Use, store, transport, handle, or dispose of any pesticide, or of any container that holds or has held a pesticide, except in compliance with regulations of the director.
- (f) Purchase for use in this state a pesticide that is labeled for agricultural use except from a person licensed as a pest control dealer pursuant to Section 12107. Persons using those products shall retain receipts of the purchase of the products for four years and make the receipts available for inspection upon request of the director or the commissioner.

12992. It is unlawful for any person to sell any adulterated or misbranded pesticide.

In any prosecution of any agent or dealer under this section it is a complete defense to prove that the adulterated or misbranded pesticide that is the basis of the prosecution was guaranteed by the party from whom the agent or dealer purchased it to be not adulterated or misbranded.

12993. It is unlawful for any person to manufacture, deliver, or sell any pesticide or any substance or mixture of substances that is represented to be a pesticide, or to retail any formula for a pesticide in conjunction with the sale or gift of materials that are represented to be the essential ingredients necessary to constitute a pesticide, which is not registered pursuant to this chapter, or for which the registration has been suspended or canceled, except as provided in regulations adopted by the director or as provided in the notice or order of suspension or cancellation. This section, however, does not apply to any pesticide product of a registrant that is manufactured solely for export outside this state, and which is so exported.

12994. It is unlawful for any person to transport, destroy, or dispose of any quarantined pesticide, unless the person has received written permission from the director.

12995. Except as provided in regulations adopted by the director or as provided in the notice or order of suspension or cancellation, it

is unlawful for any person, by himself or herself or through another, to possess or use any pesticide that is not registered pursuant to this chapter, or for which registration has been suspended.

## **Article 12. Penalties and Injunctive Relief**

12996. (a) Every person who violates any provision of this division relating to pesticides, or any regulation issued pursuant to a provision of this division relating to pesticides, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or by imprisonment of not more than six months, or by both fine and imprisonment. Upon a second or subsequent conviction of the same provision of this division relating to pesticides, a person shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or by imprisonment of not more than six months or by both fine and imprisonment. Each violation constitutes a separate offense.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the offense involves an intentional or negligent violation that created or reasonably could have created a hazard to human health or the environment, the convicted person shall be punished by imprisonment in the county jail not exceeding one year or in the state prison or by fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000), or by both the fine and imprisonment.

(c) This section does not apply to violations of Chapter 7.5 (commencing with Section 15300).

12996.5. (a) For the purposes of this chapter:

(1) "Office" means the Office of Environmental Health Hazard Assessment.

(2) "Department" means the Department of Pesticide Regulation.

(3) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code within a jurisdiction.

(4) "Agency" means the California Environmental Protection Agency.

(5) "Nonoccupational" means that the person exposed to the pesticide was not at the time of the exposure performing work as an employee.

(6) "Acute" means a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration.

(7) "Uncompensated medical care" means the cost of care not covered by any other program, including, but not limited to copayments for medical insurance, Healthy Families Program, or Medi-Cal. Reimbursed medical costs shall not exceed 125 percent of the Medi-Cal reimbursement rates.

(b) The exposure of each person to a pesticide resulting from the violation of Section 12972 or 12973, or any regulation adopted pursuant to Section 12976, 12981, or 14005, that causes acute

illnesses or injury, shall constitute a separate violation of the statute or regulation.

12997. In lieu of seeking prosecution of any violation of this division as a misdemeanor, and the penalty prescribed in Section 12996, the director may prosecute civilly pursuant to Sections 12998 and 12999, or may levy civil penalties pursuant to Section 12999.4 or the commissioner may levy civil penalties pursuant to Section 12999.5.

12997.5. (a) In addition to any penalties paid in connection with an enforcement action taken pursuant to Sections 12996, 12997, 12999, and 12999.5, any person who is found in violation of any provision of this division related to pesticides or any regulation related to pesticides adopted pursuant to this division that results in illness or injury requiring emergency medical transport or immediate medical treatment of any individual in a nonoccupational setting from any pesticide used in the production of an agricultural commodity, shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual.

(b) Any order issued in connection with a finding of a violation as described in subdivision (a) shall include the obligation to reimburse medical costs from acute illnesses and injuries of any individual requiring immediate medical treatment as a consequence of this violation to the injured individuals or their medical providers.

(c) Any person found in violation of this section shall submit to the director within 30 days of the final determination of liability, a written plan on how they will pay individuals and medical providers for the emergency medical transport and the immediate medical costs from acute medical injuries and illnesses of all individuals requiring immediate medical treatment as a consequence of the violation. A person alleged to have violated subdivision (a) may voluntarily submit a written plan pursuant to this section prior to the determination of liability. The contents of the voluntary plan shall not be held against the person in any action to determine whether the person violated those provisions.

(d) Any violation of this section shall be subject to the criminal and civil sanctions and penalties set forth in this division.

(e) Payment of emergency medical costs pursuant to this section shall not preclude an affected person from filing a civil action for injuries, illnesses, or costs related to the incident. Any damage award associated with a civil action related to the incident shall be reduced by the amount the plaintiff received from this section.

(f) Payment of emergency medical costs pursuant to this section shall not be held against the person in any action to determine whether the person violated those provisions.

(g) For any person who provides for the immediate reimbursement of medical costs for acute medical illnesses and injuries prior to a final determination by the department, the director or agricultural commissioner may reduce, by not more than 50 percent, the fines imposed pursuant to Section 12996.5. This reduction shall not limit the responsible party's financial obligation under this section. The department or agricultural commissioner shall attempt to complete the determination within 45 days of the incident.

12997.7. (a) The agency, in consultation with the department, the

office, county agricultural commissioners, local health officers, CUPAs, and affected community members, shall by August 31, 2005, establish minimum standard protocols for the purposes of amending area plans.

(b) The protocols shall include, but not be limited to, all of the following:

(1) Protocols for requesting and providing immediate access to pesticide-specific information necessary to assist emergency medical services personnel in identifying pesticides that may be causing a pesticide drift exposure incident and appropriate treatments.

(2) Protocols to delineate specific agency responsibilities and the process for responding to calls, notifying residents, and coordinating evacuation, if needed.

(3) Protocols to establish emergency shelter procedures and locations to be used in the event evacuation is needed.

(4) Protocols to access services in all languages known to be spoken in the affected area in accordance with Section 11135 of the Government Code.

(5) Protocols to ensure access to health care within 24 hours of the exposure and up to a week after the exposure.

(6) Protocols to notify medical providers regarding eligibility for reimbursement pursuant to Section 12997.5.

(c) The CUPA or administering agency shall amend the area plan for emergency response, pursuant to subdivision (c) of Section 25503, to specifically address pesticide drift exposure and to incorporate provisions of the protocols of subdivision (b).

(d) Upon the next scheduled update of the area plan, all CUPAs shall have incorporated a pesticide drift component into their area plan.

(e) The minimum standard protocols developed under subdivision (a) shall be in accordance with the California Environmental Protection Agency's guidelines.

12998. Any person who violates this division relating to pesticides or structural pest control devices, or any regulation issued pursuant to a provision of this division relating to pesticides or structural pest control devices, is liable civilly in an amount not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each violation. Any person who commits a second or subsequent violation that is the same as a prior violation or similar to a prior violation or whose intentional violation resulted or reasonably could have resulted in the creation of a hazard to human health or the environment or in the disruption of the market of the crop or commodity involved, is liable civilly in an amount not less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000) for each violation. Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department in administering this division, and Division 6 (commencing with Section 11401).

12999. Upon a complaint by the director, or by the Structural Pest Control Board in the case of violations of Chapter 7.5 (commencing with Section 15300) or regulations adopted pursuant to that chapter relating to structural pest control devices, the Attorney General may bring an action for civil penalties in any court of competent jurisdiction in this state against any person violating any provision of this division, or any regulation issued pursuant to it. The

Attorney General may bring an action for civil penalties on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred.

12999.2. The remedies or penalties provided by this division are in addition to the remedies or penalties available under any other law.

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating Sections 12115, 12116, 12671, 12992, 12993, Chapter 10 (commencing with Section 12400) of Division 6, Article 4.5 (commencing with Section 12841), Chapter 7.5 (commencing with Section 15300), or the regulations adopted pursuant to those provisions, of not more than five thousand dollars (\$5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. Prior to the hearing, the person shall be given an opportunity to review the director's evidence. At the hearing, the person shall be given the opportunity to present evidence on his or her own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.

(c) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek review of the director's decision within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. Any violation determined by the commissioner to be a serious violation as

defined in Section 6130 of Title 3 of the California Code of Regulations is subject to a fine of not more than five thousand dollars (\$5,000) for each violation. It is unlawful and grounds for denial of a permit under Section 14008 for any person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

(b) If a person has received a civil penalty for pesticide drift in a school area subject to Section 11503.5 that results in a serious violation as defined in subdivision (a), the commissioner shall charge a fee, not to exceed fifty dollars (\$50), for processing and monitoring each subsequent pesticide application that may pose a risk of pesticide drift made in a school area subject to Section 11503.5.

The Agricultural Commissioner shall continue to impose the fee for each subsequent application that may pose a risk of drift, until the person has completed 24 months without another serious violation as defined in subdivision (a).

(c) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the

commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (c) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The commissioner may levy a civil penalty pursuant to subdivisions (a), (c), and (d) against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(f) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

13000. (a) Except as provided in subdivisions (b) and (c), an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, within two years of the occurrence of the violation.

(b) When a commissioner submits a completed investigation to the director for action by the director or the Attorney General, the action shall be commenced within one year of that submission. However, nothing in this subdivision precludes the director from returning the investigation to the commissioner for action to be commenced by the commissioner, the district attorney, the city prosecutor, or the city attorney, as provided in subdivision (a).

(c) An action brought by the director to collect unpaid mill assessments and delinquent fees required by Article 4.5 (commencing with Section 12841) or an action brought by the director to collect civil penalties pursuant to Section 12999.4 for violations of Article 4.5 (commencing with Section 12841), Section 12993, or Section 12995 shall be commenced within four years of the occurrence of the violation.

13000.1. The commissioner or director may bring an action to enjoin the violation or the threatened violation of any order made pursuant to this division in the superior court in the county in which the order is issued or the violation occurs or is threatened, and the court may enjoin the violation or threatened violation upon that showing and without further evidence of irreparable injury. The court may compel specific performance of any acts or course of conduct necessary to protect persons, animals, crops, or property.

### **Article 13. Cease and Desist**

13101. The director, upon a finding that the use, handling, delivery, or sale of a pesticide in violation of any provision of this division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity, if allowed to proceed, will present an immediate hazard or cause irreparable damage, may issue an order to the persons responsible for that activity to cease and desist from further commission of the violation.

13102. The agricultural commissioner, upon a finding that the use, handling, delivery, or sale of a pesticide in violation of any provision of this division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity, if allowed to proceed, will present an immediate hazard or cause irreparable damage, may issue an order to the persons responsible for that activity to cease and desist from further commission of the violation.

Any person aggrieved by a cease and desist order issued by an agricultural commissioner may appeal the order to the director, who shall affirm, modify, or rescind the order. The order of the agricultural commissioner shall remain in force during the appeal to the director, and until the director's decision has been rendered.

### **Article 14. Birth Defect Prevention**

13121. This article shall be known and may be cited as the Birth Defect Prevention Act of 1984.

13122. It is the purpose of the Legislature in enacting this chapter to prevent pesticide induced abortions, birth defects, and infertility.

13123. For purposes of this chapter, the following terms mean:

(a) "Adverse reproductive effect" means a statistically significant adverse effect on parental reproductive performance and the growth and development of offspring, including gonadal function, conception, and parturition; abortions; birth defects; stillbirths; and resorptions.

(b) "Data gap" means that the department does not have on file a full set of valid mandatory health effects studies.

(c) "Mandatory health effects study" means adverse reproductive effect, chronic toxicity, mutagenicity, neurotoxicity, oncogenicity,

and teratogenicity studies required for full registration or licensing of pesticides in California, as of July 1, 1983.

(d) "Teratogenic" means the property of a substance or mixture of substances to produce or induce functional deviations or developmental anomalies, not heritable, in or on an animal embryo or fetus.

(e) "Mutagenic effect" means the property of a substance or mixture of substances to induce changes in the genetic complement of either somatic or germinal tissue in subsequent generations.

(f) "Chronic toxicity" means the property of a substance or mixture of substances to cause adverse effects in an organism upon repeated or continuous exposure over a period of at least one-half the lifetime of that organism.

(g) "Oncogenic" means the property of a substance or a mixture of substances to produce or induce benign or malignant tumor formations in living animals.

(h) "Neurotoxic effect" means any adverse effect on the nervous system such as delayed-onset locomotor ataxia resulting from single administration of the test substance, repeated once if necessary.

(i) "Initiation" means that the mandatory health effects study or any necessary preliminary studies, such as pilot studies or range finding studies, have been commenced.

(j) "Data generator" means a person who has completed and filed with the director a data commitment status report.

(k) "Completion" means that the study has been finished, the data has been analyzed, and the final report of the results, including all exhibits, has been prepared and submitted to the department.

(l) "Submitted" means deliverance of a completed study to the department. A study shall be deemed to be submitted until it has been determined by the department to be unacceptable and not capable of being upgraded.

(m) "Suspend" means the director has issued a notice of intent to suspend the registration of a pesticide product. The director shall issue a suspension order at the earliest possible time.

13123.5. To the extent feasible, health effects studies shall be conducted in accordance with standards and protocols established pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 135 et seq.).

13126. No new active pesticide ingredient shall be conditionally registered or licensed when any of the mandatory health effects studies, as defined in subdivision (c) of Section 13123, is missing, incomplete, or of questionable validity unless the registration is based on previous consultation with the State Director of Health Services and the Director of Industrial Relations.

13127. (a) Not later than December 31, 1985, the department shall identify 200 pesticide active ingredients which the department determines have the most significant data gaps and widespread use and which are suspected to be hazardous to people. Not later than 30 days after the report issued pursuant to former Section 13125, as added by Chapter 669 of the Statutes of 1984, the department shall notify each registrant of a pesticide product containing any of the identified 200 pesticide active ingredients of the applicable data gap required to be filled pursuant to this section.

(b) Not later than December 31, 1985, the department shall also

adopt a timetable for the filling of all data gaps on all pesticide active ingredients, other than those identified by the department pursuant to subdivision (a), which are currently registered or licensed in California. The department shall notify registrants of the applicable data gaps and the scheduled time to initiate and complete studies as provided in the timetable.

(c) (1) Not later than September 1, 1986, the department shall determine whether a test has been initiated to fill each of the data gaps for each pesticide active ingredient identified in subdivision (a). If no test has been initiated, the department shall fill data gaps in accordance with procedures provided in subparagraph (B) of paragraph (2) of subsection (c) of Section 136a of Title 7 of the United States Code. In order to carry out this section, the director has the same authority to require information from registrants of active pesticide ingredients and to suspend registration that the Administrator of the Environmental Protection Agency has pursuant to subparagraph (B) of paragraph (2) of subsection (c) of Section 136a of Title 7 of the United States Code. If a hearing is requested regarding the proposed suspension of registration, it shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. On or before July 1, 1986, the director shall, by regulation, prescribe procedures for resolving disputes or funding the filling of data gaps. The procedures may include mediation and arbitration. The arbitration procedures, insofar as practical, shall be consistent with the federal act, or otherwise shall be in accordance with the commercial arbitration rules established by the American Arbitration Association. The procedures shall be established so as to resolve any dispute within the timetable established in subdivision (a).

(2) The department shall also obtain the data which is identified in subdivision (b), according to the timetable and procedures specified in this section.

(d) The director shall review the timetable established by the Environmental Protection Agency for the accelerated registration program under amendments effective in 1989 to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(e) (1) This section does not apply to any product which the director determines has limited use or that substantial economic hardship would result to users due to unavailability of the product and there is not significant exposure to the public or workers and the product is otherwise in compliance with federal law.

(2) The director may not, pursuant to this subdivision, exempt all pesticide products containing the same pesticide active ingredient unless it is determined that the pesticide active ingredient has only limited use, there is insignificant exposure to workers or the public, and the products are otherwise in compliance with federal law. Any exemption issued pursuant to this paragraph shall expire at the end of three years after it is issued.

(f) (1) Whenever the director exercises the authority provided in paragraph (1) of subdivision (e), he or she shall give public notice of the action stating the reasons for exempting the pesticide product from the data requirements of this article. Copies of this notice shall be provided to the appropriate policy committees of the Legislature.

(2) Whenever the director acts pursuant to paragraph (2) of subdivision (e), the director shall furnish not less than 30 days'

public notice of the proposed action, stating the reasons for exempting the pesticide product from the data requirements of this article and allowing public comment thereon. Copies of the notice and the final decision shall be provided to the appropriate policy committees of the Legislature.

13127.2. The director shall, on January 15, 1992, issue a notice of the impending suspension of the registration of any pesticide product containing an active ingredient identified pursuant to subdivision (a) of Section 13127 for which the registrant has not submitted the required data by December 31, 1991. The data generator or registrant may petition the director within 30 days of notification of impending suspension of registration for deferral of the suspension pursuant to Section 13127.3. The director shall act upon such a petition at the earliest possible time and, upon denial of the petition, suspend the registration of each such product.

13127.3. (a) The director shall grant an extension of time for submission of the required data if, and only if, the director, with the concurrence of the Secretary for Environmental Protection, makes a finding that both of the following conditions are satisfied:

(1) The registrant has submitted at least eight of the mandatory health effects studies, and has initiated the studies required to fill the remaining data gaps by January 15, 1992, unless the registrant can demonstrate to the satisfaction of the director that it failed to have eight studies submitted, and the remaining studies initiated, in accordance with this paragraph because not more than two studies were delayed due to specific, written direction of the department based upon a written evaluation by a department toxicologist.

(2) That the registrant has taken appropriate steps to meet the requirements of this article. To determine whether appropriate steps have been taken, the director shall consider the registrant's timely response to data call-ins on other active ingredients contained in products registered with the department pursuant to this article and pursuant to Article 15 (commencing with Section 13141), and whether the registrant has responded in a timely and appropriate manner to notices and correspondence from the department relating to data call-ins and has taken appropriate measures to address study deficiencies identified by the department.

(b) A registrant shall not be considered to have taken the appropriate steps, as provided in subdivision (a), if the registrant has failed to meet the deadlines established by this article due to efforts to coordinate compliance with federal data requirements.

13127.31. Notwithstanding subdivision (a) of Section 13127.3, if the director finds that delays in submitting the mandatory health effects studies were primarily caused by actions of the department, the director, with the concurrence of the Secretary for Environmental Protection, may extend the deadlines for submitting the mandatory health effects studies for the following active ingredients creosote, pentachlorophenol, dicamba, para-dichlorobenzene, methyl bromide, napropamide, petroleum distillates, and arsenic pentoxide/trioxide. Registrants of these products shall submit the required studies in a timely manner, but in no case later than the time allowed in Section 13127.92.

13127.32. Notwithstanding any other provision of law, none of the following pesticide products shall remain registered in this state:

(a) Except as specified in subdivision (b), no pesticide product containing an active ingredient identified pursuant to subdivision (a) of Section 13127 for which the required studies have not been submitted by March 30, 1996, shall remain registered after that date.

(b) No pesticide product containing methyl bromide or pentachlorophenol for which the required studies have not been submitted by December 31, 1997, shall remain registered after that date.

13127.5. (a) The director, with the concurrence of the Secretary for Environmental Protection, may defer the suspension of registration of a pesticide product, as provided in Section 13127.2, if both of the following occur:

(1) The director receives a petition from the registrant or any other person requesting a deferral of suspension.

(2) The director makes a written finding of one of the following:

(A) Suspension of the registration of the product would cause substantial economic hardship to the users of the product, that there would be no significant, unmitigated human exposure to the product, and that no feasible alternatives to the product are available.

(B) Suspension of the registration of the product would be more detrimental to the agricultural or nonagricultural environment than continued use of the product, that there would be no significant, unmitigated human exposure to the product, and that no feasible alternatives to the product are available.

(C) Suspension of the registration of the product would result in significant risk to the public health and that no feasible alternatives to the product are available.

(b) The director shall limit the use of any product granted a deferral of suspension pursuant to paragraph (2) of subdivision (a) to specific uses that conform to the director's findings pursuant to paragraph (2) of subdivision (a).

13127.6. The director shall levy a charge on data generators of up to one thousand dollars (\$1,000) per day for each day a data gap continues to exist after the date the director issues a deferral of suspension of registration pursuant to Section 13127.5. In establishing the amount of the charge, the director shall consider the number of outstanding studies, the registrant's timely response to data call-ins on other products registered with the department pursuant to this article, and whether the registrant has responded in a timely and appropriate manner to notices and correspondence from the department relating to data call-ins, and whether the registrant has taken appropriate measures to address study deficiencies identified by the department. If the charge levied on the data generator is not paid, all products containing that active ingredient shall be suspended. Revenues collected from the levying of charges shall be deposited in the Department of Pesticide Regulation Fund.

13127.7. All documentation relevant to a finding made pursuant to Sections 13127.3 and 13127.5 shall be available to the public, and the findings shall be a public record.

13127.8. (a) A suspension of registration of a pesticide product containing any of the active ingredients identified pursuant to

subdivision (a) of Section 13127 shall be revoked when the director determines that the registrant has submitted all of the mandatory health effects studies. If, upon completion of the review of the studies, the director determines that a data gap still exists, the director shall suspend the registration.

(b) If at any time after January 1, 1992, the registrant meets the requirements of subdivision (a) of Section 13127.3, notwithstanding the date specified in paragraph (1) of subdivision (a) of Section 13127.3, the director shall revoke the suspension, and shall levy a charge pursuant to Section 13127.6 or, if a charge has already been levied on a registrant, the director may revise the charge in light of the registrant's compliance with the requirements of this article and Article 15 (commencing with Section 13141).

(c) The director may modify the amount of the charge levied pursuant to Section 13127.6 upon the initiation or submission of any health effects studies required pursuant to this article.

13127.9. For each mandatory health effects study that is required for each active ingredient identified pursuant to subdivision (a) of Section 13127, the registrant shall submit to the department a progress report in December of each year until the study is completed.

13127.91. The director shall suspend the registration of any pesticide product that contains an active ingredient identified pursuant to subdivision (a) of Section 13127 for which the registrant fails to do any of the following:

(a) Respond to the director's notification of a data gap.

(b) Submit progress reports as required by Section 13127.9.

(c) Demonstrate reasonable progress toward completion of all the mandatory health effects studies.

13127.92. (a) Extensions of time granted pursuant to Section 13127.3, 13127.31, and 13127.5 shall only be for the time necessary to complete the mandatory health effects studies.

(b) Mandatory health effects studies shall be completed in accordance with the following timetable:

(1) Forty-eight months for oncogenicity, chronic feeding, and reproduction studies.

(2) Twenty-four months for teratogenicity and neurotoxicity studies.

(3) Twelve months for mutagenicity studies.

(c) A deferral of suspension of registration issued pursuant to Section 13127.5 shall be subject to an annual review by the director and shall be limited to the time necessary to complete the required studies, and shall in no case exceed four years with the time tolling from the date that the registrant petitioned for an extension.

(d) Any extension of time for submission of the mandatory health effects studies granted pursuant to Section 13127.5 shall be canceled by June 15, 1993, and the registration suspended for the affected ingredient, if the registrant fails to initiate the required studies by June 15, 1992.

13128. No applicant for registration or current registrant of a pesticide who proposes to purchase or purchases a registered pesticide from another producer in order to formulate the purchased pesticide into an end use product shall be required pursuant to

Section 13127 to submit or cite mandatory health effect data pertaining to the safety of the purchased product or to offer to pay reasonable compensation for the use of any such data if the producer is engaged in fulfilling the requirements of Section 13127.

13129. (a) If the director, after evaluation of the health effects study of an active ingredient, finds that a pesticide product containing the active ingredient presents significant adverse health effects, including reproduction, birth defects, or infertility abnormalities, the director shall take cancellation or suspension action against the product pursuant to Section 12825 or 12826.

(b) The State Director of Health Services shall have access to mandatory health effects studies and other health effects studies on file at the Department of Food and Agriculture, and may, based upon the determination of the State Director of Health Services, provide advice, consultation, and recommendations concerning the risks to human health associated with exposure to the substances tested.

13130.3. (a) Notwithstanding subdivision (b) of Section 13127, the time permitted by the director for submitting data to fill a data gap shall be as follows:

(1) For oncogenicity studies and chronic feeding studies, 48 months.

(2) For reproduction studies, 48 months.

(3) For teratogenicity and neurotoxicity studies, 24 months.

(4) For mutagenicity studies, 12 months.

The time permitted by the director for submitting data to fill a data gap shall commence upon the date the department notifies the registrant of the data gap.

(b) Notwithstanding the time limit established in subdivision (a) for submitting data to fill a data gap, the department may, with the concurrence of the Office of Environmental Health Hazard Assessment, grant an extension of time to complete the required studies, upon a written finding that events beyond the control of the persons responsible for submitting the data prevent submission of the data within the prescribed time, and that those persons have made a good faith effort to complete the studies within the prescribed time. Not more than one extension of time per data requirement may be granted to complete the required studies. The length of an extension granted pursuant to this subdivision shall be limited to the time necessary to complete the studies, not to exceed the length of time specified in subdivision (a) for conducting the studies.

13131.1. (a) Not later than March 1, 1992, the director shall notify registrants of the data requirements, and the guidelines the director intends to use in reviewing studies submitted pursuant to subdivision (b) of Section 13127, for all pesticide active ingredients other than those identified pursuant to subdivision (a) of Section 13127.

(b) Not later than 90 calendar days after the date of notification of the data requirements, each registrant shall do one of the following:

(1) Inform the department, in a manner prescribed by the director, of how the registrant will comply with the data requirements.

(2) File a written objection, accompanied by any supporting evidence and arguments, to all or part of the director's notice of data requirements. The objection authorized by this paragraph shall

be the exclusive opportunity for a registrant to object to the director's notice of data requirements.

(c) The director may consider and grant a request by a registrant to initiate the studies necessary to comply with the data requirements in accordance with a schedule established by the United States Environmental Protection Agency. In no event shall a registrant be authorized pursuant to this subdivision to initiate the studies necessary for that compliance after January 1, 1994.

13131.2. (a) Prior to March 1, 1992, or in response to a written objection filed pursuant to paragraph (2) of subdivision (b) of Section 13131.1, the department may determine, with the concurrence of the Office of Environmental Health Hazard Assessment, that one or more of the mandatory health effects studies are not required in order to evaluate pesticide active ingredients other than those identified pursuant to subdivision (a) of Section 13127. This determination may be made only in accordance with one or more of the following criteria:

(1) The ingredient has been classified as "Generally Recognized as Safe" by the United States Food and Drug Administration.

(2) The study is not physically possible due to the nature of the ingredient.

(3) The department has on file toxicological data that is adequate for the assessment of the potential adverse health effects of the ingredient, and the studies relied upon for that purpose are of the same study type, are scientifically valid, and, when taken together, are of a power and sensitivity equivalent to the studies that would be waived pursuant to this subdivision.

(b) The director may, in conjunction with the Office of Environmental Health Hazard Assessment, develop regulations for modification of mandatory health effects studies.

13131.3. If the Office of Environmental Health Hazard Assessment does not concur with the determination of the department pursuant to Section 13131.2, the issue shall be decided by a majority of the membership of a panel consisting of the following persons:

(a) An appointee of the State Director of Health Services who has expertise in toxicology.

(b) An appointee of the President of the University of California who has expertise in toxicology.

(c) An appointee of the Secretary for Environmental Protection who has expertise in toxicology.

13131.4. (a) On or before January 1, 1994, the director shall issue a final notice of data gaps required to be filled for all pesticide active ingredients other than those identified pursuant to subdivision (a) of Section 13127. This notice shall be the department's final determination of the data gaps required to be filled.

(b) The time allowed under Section 13130.3 to fill the data gaps shall commence on the date that the final notice of data gaps is issued pursuant to subdivision (a), unless an extension is granted pursuant to subdivision (b) of Section 13130.3.

(c) Not later than 90 calendar days after the date the final notice of data gaps is issued pursuant to subdivision (a), each registrant shall inform the department, in a manner prescribed by the director, how the registrant will fill the data gap, including a

proposed schedule for initiation, completion, and submittal of all required studies.

13131.5. The director shall suspend the registration of any pesticide containing an active ingredient for which the director notifies a registrant pursuant to Section 13131.1 and for which the registrant or data generator, in the judgment of the director, fails to respond appropriately or fails to provide evidence that it is taking appropriate steps to secure the data that are required pursuant to Section 13131.1 or the final notice of data gaps pursuant to Section 13131.4.

13133. If any provision of this article or the application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

13134. (a) The department, in cooperation with the State Department of Health Services, shall conduct an assessment of dietary risks associated with the consumption of produce and processed foods treated with pesticides. This assessment shall integrate adequate data on acute effects and the mandatory health effects studies specified in subdivision (c) of Section 13123, appropriate dietary consumption estimates, and relevant residue data based on the department's and the State Department of Health Services' monitoring data and appropriate field experimental and food technology information to quantify consumer risk. Differences in age, sex, ethnic, and regional consumption patterns shall be considered. The department shall submit each risk assessment to the State Department of Health Services, with necessary supporting documentation, for peer review, which shall consider the adequacy of public health protection. The State Department of Health Services may provide comments to the department. The department shall formally respond to all of the comments made by the State Department of Health Services.

The department shall modify the risk assessment to incorporate the comments as deemed appropriate by the director. All correspondence between the department and the State Department of Health Services in this matter shall be made available to any person, upon request, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) The department shall consider those pesticides designated for priority food monitoring pursuant to Section 12535 and the results of the department's or the State Department of Health Services' monitoring in establishing priorities for the dietary risk assessments.

(c) (1) If the department lacks adequate data on the acute effects of pesticide active ingredients or mandatory health effects studies specified in subdivision (c) of Section 13123 necessary to accurately estimate dietary risk, the department shall require the appropriate data to be submitted by the registrant of products whose labels include food uses. This subdivision shall not be construed to affect the timeframes established pursuant to Section 13127.

(2) No applicant for registration, or current registrant, of a pesticide who proposes to purchase or purchases a registered pesticide from another producer in order to formulate the purchased

pesticide into an end use product shall be required to submit or cite data pursuant to this section or offer to pay reasonable compensation for the use of any such data if the producer is engaged in fulfilling the data requirements of this section.

(d) (1) If a registrant fails to submit the data requested by the director pursuant to this section within the time specified by the director, the director shall issue a notice of intent to suspend the registration of that pesticide. The director may include in the notice of intent to suspend any provisions that are deemed appropriate concerning the continued sale and use of existing stocks of that pesticide. Any proposed suspension shall become final and effective 30 days from the receipt by the registrant of the notice of intent to suspend, unless during that time a request for hearing is made by a person adversely affected by the notice or the registrant has satisfied the director that the registrant has complied fully with the requirements that served as a basis for the notice of intent to suspend. If a hearing is requested, a hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The only matter for resolution at the hearing shall be whether the registrant has failed to take the action that served as the basis for the notice of intent to suspend the registration of the pesticide for which additional data is required and whether the director's determination with respect to the disposition of existing stocks is consistent with this subdivision.

(2) A hearing shall be held and a determination made within 75 days after receipt of a request for a hearing. The decision rendered after completion of the hearing shall be final. Any registration suspended shall be reinstated by the director if the director determines that the registrant has complied fully with the requirements that served as a basis for the suspension of the registration.

(e) If the department finds that any pesticide use represents a dietary risk that is deleterious to the health of humans, the department shall prohibit or take action to modify that use or modify the tolerance pursuant to Section 12561, or both, as necessary to protect the public.

13135. The department and the State Department of Health Services shall jointly review the existing federal and state pesticide registration and food safety system and determine if the existing programs adequately protect infants and children from dietary exposure to pesticide residues. The review shall commence as early as possible in 1990, so that any policy or administrative adjustments determined to be necessary as a result of the joint review can be made on a timely basis. The department shall consult with the University of California and other qualified public and private entities in conducting the joint review. The joint review shall continue for a sufficient time in order to evaluate the report of infant exposure to pesticide residues, which is presently being undertaken by the National Academy of Sciences. Within six months of the official release of the National Academy of Sciences' study, the department shall finalize a report describing the evaluation that was conducted pursuant to this section, including any recommendations for modification of the existing regulatory system in order to adequately protect infants and children.

## **Article 15. The Pesticide Contamination Prevention Act**

13141. The Legislature finds and declares all of the following:

(a) It is the right of every citizen in this state to drink safe, potable, wholesome, and pure drinking water.

(b) The health and economic prosperity of rural communities and individual farm families in the state are threatened by contaminated drinking water supplies because of their proximity to the use of pesticides.

(c) Pesticide contaminants and other organic chemicals are being found at an ever increasing rate in underground drinking water supplies.

(d) The United States Environmental Protection Agency has concluded that evidence of relatively localized levels of pesticide pollution should be treated as a warning of more widespread, future contamination.

(e) Groundwater once polluted cannot be easily cleaned up; thus, there is a considerable potential that groundwater pollution will continue long after actions have been taken to restrict application of the pesticide to land.

(f) Due to the potential widespread exposure to public drinking water supplies from pesticide applications to the land and the resultant risk to public health and welfare, the potential for pollution of groundwater due to pesticide use must be considered in the registration, renewal, and reregistration process.

(g) It is the purpose of this article to prevent further pesticide pollution of the groundwater aquifers of this state which may be used for drinking water supplies.

13142. For the purposes of this article, the following definitions apply:

(a) "Active ingredient" has the same meaning as defined in Section 136 of Title 7 of the United States Code.

(b) "Agricultural use" has the same meaning as defined in Section 11408.

(c) "Board" means the State Water Resources Control Board.

(d) "Chemigation" means a method of irrigation whereby a pesticide is mixed with irrigation water before the water is applied to the crop or to the soil.

(e) "Degradation product" means a substance resulting from the transformation of a pesticide by physicochemical or biochemical means.

(f) "Groundwater protection data gap" means that, for a particular pesticide, the director, after study, has been unable to determine that each study required pursuant to subdivision (a) of Section 13143 has been submitted or that each study submitted pursuant to subdivision (a) of Section 13143 is valid, complete, and adequate.

(g) "Henry's Law constant" is an indicator of the escaping tendency of dilute solutes from water and is approximated by the ratio of the vapor pressure to the water solubility at the same temperature.

(h) "Pesticide" is defined in Section 12753.

(i) "Pesticide registrant" means a person that has registered a pesticide pursuant to this chapter.

(j) "Pollution" means the introduction into the groundwaters of the state of an active ingredient, other specified product, or degradation product of an active ingredient of a pesticide above a level, with an adequate margin of safety, that does not cause adverse health effects.

(k) "Soil adsorption coefficient" is a measure of the tendency of pesticides, or their biologically active transformation products, to bond to the surfaces of soil particles.

(l) "Soil microbial zone" means the zone of the soil below which the activity of microbial species is so reduced that it has no significant effect on pesticide breakdown.

13143. (a) Not later than December 1, 1986, a person that has registered a pesticide in California for agricultural use shall submit to the director the information prescribed in this subdivision. The information shall be submitted for each active ingredient in each pesticide registered. The registrant shall submit all of the following information:

- (1) Water solubility.
- (2) Vapor pressure.
- (3) Octanol-water partition coefficient.
- (4) The soil adsorption coefficient.
- (5) Henry's Law constant.

(6) Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, under California or similar environmental use conditions.

(7) Any additional information the director determines is necessary.

(b) The director also may require the information prescribed in subdivision (a) for other specified ingredients and degradation products of an active ingredient in any pesticide. The director shall also require this information when the State Department of Health Services or the board submits a written request for the information to the director, if the State Department of Health Services or the board specifies the reasons why it considers the information necessary. The director shall deny the request upon a written finding that, based on available scientific evidence, the request would not further the purposes of this article.

(c) All information submitted pursuant to subdivision (a) shall be presented in English and summarized in tabular form on no more than three sheets of paper with the actual studies, including methods and protocols attached. All information, at a minimum, shall meet the testing methods and reporting requirements provided by the Environmental Protection Agency Pesticide Assessment Guidelines, Subdivision D Series 60 to 64, inclusive, for product chemistry and Subdivision N Series 161 to 164, inclusive, for environmental fate, including information required for degradation products in specific studies. With prior approval from the director, registrants may use specified alternative protocols as permitted by the United States Environmental Protection Agency guidelines, if the director finds use of the protocol is consistent with, and accomplishes the objectives of, this article. Studies conducted on active ingredients in the formulation of pesticides shall meet the same testing methods as required for studies conducted on active ingredients. The department, in consultation with the board, in addition, may require specified testing protocols that are specific to California soil and climatic conditions. The director may give a pesticide registrant an

extension of up to two years if it determines that this additional time is necessary and warranted to complete the studies required in paragraph (6) of subdivision (a). No extension of the deadline for these studies shall go beyond December 1, 1989. When seeking the extension, the registrant shall submit to the director a written report on the current status of the dissipation studies for which the extension is being sought. For registrants granted an extension pursuant to this section, Section 13145 shall be effective upon the completion date established by the director.

(d) The director may grant the registrant an extension beyond the one authorized in subdivision (c), if all of the following conditions are met:

(1) The registrant submits a written request to the director for an extension beyond the one granted pursuant to subdivision (c). The request shall include the reasons why the extension is necessary and the findings produced by the study up to the time the request is made.

(2) The director finds that the registrant has made every effort to complete the studies required in paragraph (6) of subdivision (a) within the required time limits of the extension granted pursuant to subdivision (c) and that those studies could not be completed within the required time limits due to circumstances beyond the control of the registrant.

(3) The director establishes a final deadline, not to exceed one year beyond the time limit of the extension granted pursuant to subdivision (c), and a schedule of progress by which the registrant shall complete the studies required in paragraph (6) of subdivision (a).

(e) After December 1, 1986, no registration of any new pesticide shall be granted unless the applicant submits all of the information required by the director pursuant to this article and the director finds that the information meets the requirements of this article.

13144. (a) The department shall establish specific numerical values for water solubility, soil adsorption coefficient (Koc), hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. The values established by the department shall be at least equal to those established by the Environmental Protection Agency. The department shall revise the numerical values when the department finds that the revision is necessary to protect the groundwater of the state. The numerical values established or revised by the department shall always be at least as stringent as the values being used by the Environmental Protection Agency at the time the values are established or revised by the department.

(b) On or before December 31, 2004, and updated at least annually thereafter, the director shall post the following information on the department's Web site for each pesticide registered for agricultural use and during years that specific numerical values are revised:

(1) A list of each active ingredient, other specified ingredient, or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.

(2) A list of each pesticide that contains an active ingredient, other specified ingredients, or degradation product of an active ingredient that is greater than one or more of the numerical values established pursuant to subdivision (a), or is less than the numerical value in the case of soil adsorption coefficient, in both of the following categories:

(A) Water solubility or soil adsorption coefficient (Koc).

(B) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism, or field dissipation.

(3) For each pesticide listed pursuant to paragraph (2) for which information is available, a list of the amount sold in California during the most recent year for which sales information is available and where and for what purpose the pesticide was used, when this information is available in the pesticide use report.

(c) The department shall determine, to the extent possible, the toxicological significance of the degradation products and other specified ingredients identified pursuant to paragraph (2) of subdivision (b).

13145. (a) Any registrant of a pesticide identified in paragraph (1) of subdivision (b) of Section 13144 is subject to a fine of up to ten thousand dollars (\$10,000) for each day the groundwater protection data gap exists. In determining the amount of the fine, the director shall consider both of the following:

(1) The extent to which the registrant has made every effort to submit valid, complete, and adequate information within the required time limits.

(2) Circumstances beyond the control of the registrant that have prevented the registrant from submitting valid, complete, and adequate information within the required time limits.

(b) If there is a dispute between the director and a registrant regarding the existence of a groundwater protection data gap and the director desires to levy a fine on the registrant pursuant to this section, the director shall submit the issues of the dispute to the subcommittee created pursuant to subdivision (b) of Section 13150. The subcommittee shall review the evidence submitted by the registrant and the director and make recommendations to the director on whether or not the groundwater data gap exists.

(c) Subdivisions (a) and (b) shall not apply to pesticide products whose registration has lapsed or has been canceled, or to products that have been granted a current extension pursuant to Section 13143.

(d) The director shall, by regulation, establish a list of pesticides that have the potential to pollute groundwater. The list shall be entitled the Groundwater Protection List. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall immediately place all pesticides identified in paragraph (2) of subdivision (b) of Section 13144 on the Groundwater Protection List and shall regulate the use of these pesticides if the pesticide is intended to be applied to or injected into the soil by ground-based application equipment or by chemigation, or the label of the pesticide requires or recommends that the application be followed, within 72 hours, by flood or furrow irrigation. The director shall adopt regulations to carry out this article. The regulations shall include, but are not limited to, the following:

(1) Any person who uses a pesticide that has been placed on the Groundwater Protection List and does not file a report pursuant to Section 12979, is required to report to the county agricultural commissioner the use of the pesticide on a form prescribed by the director. The reporting deadline shall conform to the deadline established for the reporting of the use of restricted materials.

(2) Dealers of pesticides shall make quarterly reports to the director of all sales of pesticides that have been placed on the

Groundwater Protection List to persons who are not otherwise required to file a report pursuant to either paragraph (1) or Section 12979. This report shall include lists of all sales by purchases.

13146. (a) The director shall not register or renew the registration of a pesticide intended to be applied to or injected into the ground by ground-based application equipment or by chemigation after December 1, 1988, if there is a groundwater protection data gap for that pesticide, unless the registrant has been granted a current extension pursuant to Section 13143.

(b) The director shall not register or renew the registration of a pesticide intended for use with other than ground-based application equipment after December 1, 1989, if there is a groundwater protection data gap for that pesticide, unless the registrant has been granted a current extension pursuant to Section 13143.

(c) If a registrant does not comply with the information requirements of Section 13143, the department shall file the information requirements of Section 13143 in accordance with procedures provided in subparagraph (B) of paragraph (2) of subsection (c) of Section 136a of Title 7 of the United States Code. In order to carry out this section, the director has the same authority to require information from registrants of active pesticide ingredients that the administrator of the Environmental Protection Agency has pursuant to subparagraph (B) of paragraph (2) of subsection (c) of Section 136a of Title 7 of the United States Code. On or before July 1, 1986, the director shall, by regulation, prescribe procedures for resolving disputes or funding the filing of the information requirements of Section 13143. The procedures may include mediation and arbitration. The arbitration procedures, insofar as practical, shall be consistent with the federal act, or otherwise shall be in accordance with the commercial arbitration rules established by the American Arbitration Association. The procedures shall be established so as to resolve any dispute with the timetable established in Section 13143.

(d) For an active ingredient or pesticide for which a registrant or registrants do not provide the information required pursuant to Section 13143, the director may determine the active ingredient or pesticide to be critical to agricultural production and the director may utilize assessments charged to those registrants of the active ingredient for which the information is required pursuant to Section 13143 in amounts necessary to cover the department's expenses in obtaining the information. The assessment shall be made pursuant to Section 12824. The director may also request an appropriation to be used in combination with assessments to obtain the required information.

13147. The director shall annually request a budget appropriation in order to meet the reasonable and anticipated costs of conducting soil and water monitoring pursuant to Section 13148, a review of data submitted pursuant to Section 13143, and the administration of pesticides placed on the Groundwater Protection List pursuant to this article.

13148. (a) In order to more accurately determine the mobility and persistence of the pesticides identified pursuant to paragraph (2) of subdivision (b) of Section 13144 and to determine if these pesticides have migrated to groundwaters of the state, the director

shall conduct soil and groundwater monitoring statewide in areas of the state where the pesticide is primarily used or where other factors identified pursuant to Section 13143 and subdivision (b) of Section 13144, including physicochemical characteristics and use practices of the pesticides, indicate a probability that the pesticide may migrate to the groundwaters of the state. The monitoring shall commence within one year after the pesticide is placed on the Groundwater Protection List and shall be conducted in accordance with standard protocol and testing procedures established pursuant to subdivision (b). Monitoring programs shall replicate conditions under which the pesticide is normally used in the area of monitoring. In developing a monitoring program, the director shall coordinate with other agencies that conduct soil and groundwater monitoring.

(b) Within 90 days after a pesticide is placed on the Groundwater Protection List pursuant to subdivision (d) of Section 13145, the director, in consultation with the board, shall develop a standard protocol and testing procedure for each pesticide identified pursuant to subdivision (d) of Section 13145.

(c) The director shall report all monitoring results to the State Department of Health Services and the board.

13149. (a) Within 90 days after a pesticide is found under any of the conditions listed in paragraph (1), (2), or (3), the director shall determine whether the pesticide resulted from agricultural use in accordance with state and federal laws and regulations, and shall state in writing the reasons for the determination.

(1) An active ingredient of a pesticide has been found at or below the deepest of the following depths:

(A) Eight feet below the soil surface.

(B) Below the root zone of the crop where the active ingredient was found.

(C) Below the soil microbial zone.

(2) An active ingredient of a pesticide has been found in the groundwaters of the state.

(3) The pesticide has degradation products or other specified ingredients that pose a threat to public health and that have been found under the conditions specified for active ingredients in either paragraph (1) or (2).

(b) Upon a determination by the director that a pesticide meets any of the conditions specified in paragraph (1), (2), or (3) of subdivision (a) as a result of agricultural use in accordance with state and federal laws and regulations, the director shall immediately notify the registrant of the determination and of the registrant's opportunity to request a hearing pursuant to subdivision (c).

(c) Any pesticide that meets any of the conditions in subdivision (b) shall be subject to Section 13150 if the registrant of the pesticide requests, within 30 days after the notice is issued, that the subcommittee conduct a hearing, as described in Section 13150. Notwithstanding any other provision of law, if the registrant does not request the hearing within 30 days after the notice is issued, the director shall cancel the registration of the pesticide.

(d) For the purposes of this section, any finding of a pesticide shall result from either an analytical method approved by the department that provides unequivocal identification of a chemical, such as mass spectroscopy, or from verification, within 30 days, by a

second analytical method or a second analytical laboratory approved by the department.

13150. The director may allow the continued registration, sale, and use of a pesticide that meets any one of the conditions specified in Section 13149 if all of the following conditions are met:

(a) The registrant submits a report and documented evidence that demonstrate both of the following:

(1) That the presence in the soil of any active ingredient, other specified ingredient, or degradation product does not threaten to pollute the groundwater of the state in any region within the state in which the pesticide may be used according to the terms under which it is registered.

(2) That any active ingredient, other specified ingredient, or degradation product that has been found in groundwater has not polluted, and does not threaten to pollute, the groundwater of the state in any region within the state in which the pesticide may be used according to the terms under which it is registered.

(b) A subcommittee of the director's pesticide registration and evaluation committee, consisting of one member each representing the director, the State Department of Health Services, and the board, holds a hearing, within 180 days after it is requested by the registrant, to review the report and documented evidence submitted by the registrant and any other information or data that the subcommittee determines is necessary to make a finding.

(c) The subcommittee, within 90 days after the hearing is conducted, makes any of the following findings and recommendations:

(1) That the ingredient found in the soil or groundwater has not polluted, and does not threaten to pollute, the groundwater of the state.

(2) That the agricultural use of the pesticide can be modified so that there is a high probability that the pesticide would not pollute the groundwater of the state.

(3) That modification of the agricultural use of the pesticide pursuant to paragraph (2) or cancellation of the pesticide will cause severe economic hardship on the state's agricultural industry, and that no alternative products or practices can be effectively used so that there is a high probability that pollution of the groundwater of the state will not occur. The subcommittee shall recommend a level of the pesticide that does not significantly diminish the margin of safety recognized by the subcommittee to not cause adverse health effects.

When the subcommittee makes a finding pursuant to paragraph (2) or this paragraph (3), it shall determine whether the adverse health effects of the pesticide are carcinogenic, mutagenic, teratogenic, or neurotoxic.

(d) The director, within 30 days after the subcommittee issues its findings, does any of the following:

(1) Concurs with the subcommittee finding pursuant to paragraph (1) of subdivision (c).

(2) Concurs with the subcommittee finding pursuant to paragraph (2) of subdivision (c), and adopts modifications that result in a high probability that the pesticide would not pollute the groundwaters of the state.

(3) Concurs with the subcommittee findings pursuant to paragraph (3) of subdivision (c), or determines that the subcommittee finding pursuant to paragraph (2) of subdivision (c) will cause severe

economic hardship on the state's agricultural industry. In either case, the director shall adopt the subcommittee's recommended level or shall establish a different level, provided the level does not significantly diminish the margin of safety to not cause adverse health effects.

(4) Determines that, contrary to the finding of the subcommittee, no pollution or threat to pollution exists. The director shall state the reasons for his or her decisions in writing at the time any action is taken, specifying any differences with the subcommittee's findings and recommendations. The written statement shall be transmitted to the appropriate committees of the Senate and Assembly, the State Department of Health Services, and the board.

When the director takes action pursuant to paragraph (2) or (3), he or she shall determine whether the adverse health effects of the pesticide are carcinogenic, mutagenic, teratogenic, or neurotoxic.

13151. Any pesticide identified pursuant to Section 13149 that fails to meet any of the conditions of Section 13150 shall be canceled.

13152. (a) The department shall conduct ongoing soil and groundwater monitoring of any pesticide whose continued use is permitted pursuant to paragraph (3) of subdivision (d) of Section 13150.

(b) Any pesticide monitored pursuant to this section that is determined, by review of monitoring data and any other relevant data, to pollute the groundwaters of the state two years after the director takes action pursuant to paragraph (3) of subdivision (d) of Section 13150 shall be canceled unless the director has determined that the adverse health effects of the pesticide are not carcinogenic, mutagenic, teratogenic, or neurotoxic.

(c) The department shall maintain a statewide database of wells sampled for pesticide active ingredients. All agencies shall submit to the department, in a timely manner, the results of any well sampling for pesticide active ingredients and the results of any well sampling that detect any pesticide active ingredients.

(d) Not later than June 30, 1986, the director, the State Department of Health Services, and the board shall jointly establish minimum requirements for well sampling that will ensure precise and accurate results. The requirements shall be distributed to all agencies that conduct well sampling. All well sampling conducted after December 1, 1986, shall meet the minimum requirements established pursuant to this subdivision.

(e) The department shall post the following information on its Web site, updated no later than December 1 of each year:

(1) The number of wells sampled for pesticide active ingredients, the location of the wells from which the samples were taken, the well numbers, if available, and the agencies responsible for drawing and analyzing the samples.

(2) The number of well samples with detectable levels of pesticide active ingredients, the location of the wells from which the samples were taken, the well numbers, if available, and the agencies responsible for drawing and analyzing the samples.

(3) An analysis of the results of well sampling described in paragraphs (1) and (2), to determine the probable source of the residues. The analysis shall consider factors such as the physical and chemical characteristics of the pesticide, volume of use and

method of application of the pesticide, irrigation practices related to use of the pesticide, and types of soil in areas where the pesticide is applied.

(4) Actions taken by the director and the board to prevent pesticides from migrating to groundwaters of the state.

## **Article 16. The Interim Data Gap Exemption for Qualified Federally Registered Pesticides**

13161. For the purposes of this article, the following definitions apply:

(a) "Feasible alternative" means other chemical or nonchemical procedures that can reasonably accomplish the same pest control function as existing procedures with comparable effectiveness and reliability, taking into account economic, environmental, sociological, technological, and ecological factors, including impact on beneficial and other nontarget organisms, pest resistance to pesticides, and timeliness of control.

(b) "Pest management system" means a systematic approach to pest control that stresses the application of biological and cultural pest control techniques with the selective use of pesticides when necessary to achieve acceptable levels of control with the least possible harm to nontarget organisms and the environment as described in subdivision (f) of Section 11501.

13162. The director may issue a certificate of interim registration allowing the sale and use of a pesticide that otherwise meets the requirements of this chapter if all of the following conditions are met:

(a) The certificate stipulates which of the California data requirements listed in Section 13163 are being deferred for completion during the time of interim registration.

(b) The certificate stipulates a period of time, not to exceed three years, for each deferral determined by the director as reasonably sufficient for the generation, submission, and review of the data.

(c) The certificate stipulates any limitations on the use of the pesticide that the director may deem appropriate pursuant to Section 13166 or on the sale of the pesticide.

13163. In granting a certificate of interim registration, the director may defer no more than three of the following registration data requirements:

(a) Efficacy studies pursuant to Section 12824.

(b) KOW (octanol water partition coefficient) pursuant to paragraph (3) of subdivision (a) of Section 13143.

(c) Soil photolysis pursuant to paragraph (6) of subdivision (a) of Section 13143.

(d) A field dissipation study pursuant to paragraph (6) of subdivision (a) of Section 13143.

(e) A study pursuant to subdivision (a) of Section 13143 that will be redone to correct errors or a study conducted under California conditions or guidelines, if the weight of evidence from all other submitted data support a scientific judgment in favor of interim registration.

13164. Consistent with the limitations of Section 13163, a registrant or a user group of any pesticide registered by the United States Environmental Protection Agency may apply for a California certificate of interim registration if the applicant does all of the following:

(a) The applicant provides information that the product would fill a need and significantly enhance a systems approach to pest management during the period the applicant completes requirements for a full California registration. Additionally, the information supporting an interim registration shall be based upon one or more of the following conclusions that the product will:

(1) Reduce risks to the public health, the pesticide workplace, or the environment by reducing the overall use of chemical controls within a pest management system.

(2) Reduce risks to the public health, the pesticide workplace, or the environment by providing a more benign alternative to an existing use pattern.

(3) Reduce risks of pest resistance problems such as loss of economic efficacy and increased amounts or frequency of chemical applications by providing better integrated management of a pest or pest complex.

(4) Reduce a substantial economic hardship to a segment of California's agricultural industry due to a pest infestation for which there is no other feasible alternative.

(b) The applicant provides the director with all data that is required to support the federal and California registrations of the pesticide product, except the data which may be deferred pursuant to Section 13163, and any other available data that the director may deem appropriate.

(c) The applicant makes a commitment to generate all data required in California for a full certificate of registration within a reasonable period of time to be determined by the director and reflected in the certificate of interim registration. The written commitment shall identify the developing party or parties for each deferred data requirement within 90 days of the issuance of the certificate of interim registration and identify a schedule of quarterly progress reports that will be submitted.

13165. Notwithstanding Section 13163, the director shall not grant a certificate of interim registration unless he or she consults with the Pesticide Registration and Evaluation Committee on the proposed interim registration, and makes a written finding, after consultation, declaring all of the following:

(a) That the pesticide is needed and will be a significant component of a pest management system as demonstrated by the applicant pursuant to subdivision (a) of Section 13164.

(b) That the interim use of the pesticide, in conformance with the limitations established by the director pursuant to Section 13166, is not expected to cause any significant adverse effect on the public health, the safety of the pesticide workplace, or the environment, including a finding that the pesticide does not threaten to pollute the groundwater of the state.

(c) That the weight of evidence supports a scientific judgment in favor of interim registration.

13166. The director shall limit the use of any pesticide granted a

certificate of interim registration to specific uses within a pest management system meeting the requirements of subdivision (a) of Section 13164. The director may place additional restrictions on the use of any pesticide granted a certificate of interim registration, including, but not limited to, requiring a restricted material permit or the written recommendation of a specially trained pest control advisor or specially trained certified private applicator, or limiting the quantity, area, and manner of application.

13167. The director shall revoke or refuse to renew a certificate of interim registration at any time that he or she finds that the interim registration no longer meets all the requirements of this article, including the registrant's failure to submit a progress report for any deferred study, a failure to show in the report that a good faith effort to complete an acceptable study is making satisfactory progress, or the period of time from the issuance of the certificate has exceeded the three year limit set forth in Section 13162. The director shall provide the registrant with the basis for the decision in writing.

13168. The director may adopt regulations to carry out this article.

13169. To the extent that this article conflicts with other provisions in Article 15 of this chapter, this article shall prevail.

Unless otherwise specified in this article, a certificate of interim registration shall be subject to all other provisions governing certificates of registration in Division 6 (commencing with Section 11401) and this division.

13170. The department shall impose a fee in an amount sufficient to cover the department's costs of reviewing and processing the application on any person who applies for a certificate of interim registration pursuant to this article. Fee revenue shall be deposited in the Department of Pesticide Regulation Fund and shall be available, upon appropriation by the Legislature, to offset the department's costs to process and review these applications.

## **Article 17. Healthy Schools Act of 2000**

13180. This article, Article 4 (commencing with Section 17608) of Chapter 5 of Part 10.5 of the Education Code, and Article 2 (commencing with Section 105500) of Chapter 7 of Division 103 of the Health and Safety Code, shall be known and may be cited as the Healthy Schools Act of 2000.

13181. Notwithstanding any other provision of law, for purposes of this article, "integrated pest management" means a pest management strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. Pesticides that pose the least possible hazard and are effective in a manner that minimizes risks to people,

property, and the environment, are used only after careful monitoring indicates they are needed according to preestablished guidelines and treatment thresholds. This definition shall apply only to integrated pest management at school facilities.

13182. It is the policy of the state that effective least toxic pest management practices should be the preferred method of managing pests at schoolsites and that the state, in order to reduce children's exposure to toxic pesticides, shall take the necessary steps, pursuant to this article, to facilitate the adoption of effective least toxic pest management practices at schoolsites. It is the intent of the Legislature to encourage appropriate training to be provided to school personnel involved in the application of pesticide at a schoolsite.

13183. The Department of Pesticide Regulation shall, by July 1, 2001, promote and facilitate the voluntary adoption of integrated pest management programs for all school districts that voluntarily choose to do so. For these school districts, the department shall do all of the following:

(a) Establish an integrated pest management program for school districts consistent with Section 13181. In establishing the program, the department shall:

(1) Develop criteria for identifying least-hazardous pest control practices and encourage their adoption as part of an integrated pest management program at each schoolsite.

(2) Develop a model program guidebook that prescribes essential program elements for a school district that has adopted a least-hazardous integrated pest management program. At a minimum, this guidebook shall include guidance on all of the following:

(A) Adopting an IPM policy.

(B) Selecting and training an IPM coordinator.

(C) Identifying and monitoring pest populations and damage.

(D) Establishing a community-based school district advisory committee.

(E) Developing a pest management plan for making least-hazardous pest control choices.

(F) Contracting for integrated pest management services.

(G) Training and licensing opportunities.

(H) Establishing a community-based right-to-know standard for notification and posting of pesticide applications.

(I) Recordkeeping and program review.

(b) Make the model program guidebook available to school districts and establish a process for systematically updating the guidebook and supporting documentation.

13184. (a) In implementing Section 13183, the department shall establish and maintain an Internet website as a comprehensive directory of resources describing and promoting least-hazardous practices at schoolsites. The website shall also make available an electronic copy of the model program guidebook, its updates, and supporting documentation. The department shall also establish and maintain on its website an easily identified link that provides the public with all appropriate information regarding the public health and environmental impacts of pesticide active ingredients and ways to reduce the use of pesticides at school facilities.

(b) It is the intent of the Legislature that the state assist

school districts to ensure that compliance with Section 17612 of the Education Code is simple and inexpensive. The department shall include in its website Internet-based links that allow schools to properly identify and list the active ingredients of pesticide products they expect to be applied during the upcoming year. Use of these links by schools is not mandatory but shall be made available to all schools at no cost. The department shall ensure that adequate resources are available to respond to inquiries from school facilities or districts regarding the use of integrated pest management practices.

13185. (a) The department shall establish an integrated pest management training program in order to facilitate the adoption of a model IPM program and least-hazardous pest control practices by school districts. In establishing the IPM training program, the department shall do all of the following:

(1) Adopt a "train-the-trainer" approach, whenever feasible, to rapidly and broadly disseminate program information.

(2) Develop curricula and promote ongoing training efforts in cooperation with the University of California and the California State University.

(3) Prioritize outreach on a regional basis first and then to school districts.

(b) Nothing in this article shall preclude a school district from adopting stricter pesticide use policies.

13186. (a) The Legislature finds and declares that the Department of Pesticide Regulation, pursuant to Section 12979 of the Food and Agricultural Code and Sections 6624 and 6627 of Title 3 of the California Code of Regulations, requires persons engaged for hire in the business of pest control to maintain records of pesticide use and report a summary of that pesticide use to the county agricultural commissioner or director. The Legislature further finds and declares that it is in the interest of the state, in implementing a school integrated pest management program pursuant to this article, to collect specified information on the use of pesticides at school facilities.

(b) The Department of Pesticide Regulation shall prepare a school pesticide use form to be used by licensed and certified pest control operators when they apply any pesticides at a schoolsite. The form shall include, for each application at a schoolsite, the name and address of the schoolsite, date and location of application, pesticide product name, and the quantity of pesticide used. Nothing in this section shall change any existing applicable pesticide use reporting requirements.

(c) On and after January 1, 2002, persons required to submit pesticide use records to the county agricultural commissioner or director shall complete and submit to the director the school pesticide use forms established pursuant to this section. The forms shall be submitted annually and may be submitted more often at the discretion of the pest control operator maintaining the forms.

13187. Section 13186 shall not apply to any agency signatory to a cooperative agreement with the State Department of Health Services pursuant to Section 116180 of the Health and Safety Code.

13188. The Director of Pesticide Regulation may adopt regulations

to implement this article.

## **Article 18. Contamination of Compost**

13190. (a) "Clopyralid" means 3,6-dichloro-2-pyridinecarboxylic acid.

(b) "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or that are separated at a centralized facility.

(c) "Department" means the Department of Pesticide Regulation.

(d) "Herbicide" means a pesticide, as defined in Section 12753, that is intended to kill weeds.

(e) "Lawn and turf use" means a residential or nonresidential use of an herbicide on lawn and turf, including, but not limited to, lawn and turf located at schools, parks, office buildings and golf courses. Lawn and turf use does not include use of an herbicide on lawn and turf located in turf farms, uncultivated open space, agricultural rangeland or cultivated farmland.

(f) "Persistent residues in compost" means residues of an herbicide in compost at levels and in a form with the potential to be toxic or injurious to plants.

(g) "Plants" means desirable vegetation, except weeds.

(h) "Weed" means any plant that grows where not wanted, as defined in Section 12759.

13191. (a) No person, except a pest control dealer licensed pursuant to Chapter 7 (commencing with Section 12101) of Division 6 of the Food and Agricultural Code, may sell a pesticide that contains the active ingredient clopyralid.

(b) Pesticides containing the active ingredient clopyralid that are labeled for use on lawns and turf, including golf courses, may only be sold to qualified applicators licensed pursuant to Chapter 8 (commencing with Section 12201) of Division 6 of the Food and Agricultural Code or issued a certificate pursuant to Chapter 3 (commencing with Section 14151) of Division 7 of the Food and Agricultural Code.

13192. Not later than April 1, 2003, the department shall, pursuant to Sections 12824 and 12825, do both of the following:

(a) Determine in writing those lawn and turf uses of the herbicide clopyralid for which there is no reasonable likelihood that the specified use will result in persistent residues in compost.

(b) Take either of the following actions:

(1) Impose appropriate restrictions on the lawn and turf uses of the herbicide clopyralid that are not identified in the determination made pursuant to subdivision (a).

(2) Cancel any lawn and turf use that the department determines is likely to result in persistent residues in compost.

## **CHAPTER 3 RESTRICTED MATERIALS**

### **Article 1. Generally**

14001. The director shall control and otherwise regulate the use of restricted materials found to meet the criteria of Section 14004.5.

14002. This chapter applies to all agencies of the United States and the State of California and its subdivisions or to their officers, agents, or employees. Nothing in this section affects the liability of a public entity under Section 862 of the Government Code.

14003. This article does not relieve any person from liability for any damage to the person or property of another person which is caused by the use of any restricted material.

14004. The director, and the commissioner of each county under the direction and supervision of the director, shall enforce this chapter and the regulations issued pursuant to it.

14004.5. The director shall, by regulation, designate and establish as necessary to carry out the purposes of this division, a list of restricted materials based upon, but not limited to, any of the following criteria:

- (a) Danger of impairment of public health.
- (b) Hazards to applicators and farmworkers.
- (c) Hazards to domestic animals, including honeybees, or to crops from direct application or drift.
- (d) Hazard to the environment from drift onto streams, lakes, and wildlife sanctuaries.
- (e) Hazards related to persistent residues in the soil resulting ultimately in contamination of the air, waterways, estuaries or lakes, with consequent damage to fish, wild birds, and other wildlife.
- (f) Hazards to subsequent crops through persistent soil residues.

14005. Except as provided in subdivision (d) of Section 14006.6, the director shall adopt regulations which govern the possession and use of any restricted material which he or she finds and determines is injurious to the environment or to any person, animal, crop, or other property.

14006. The regulations shall prescribe the time when, and the conditions under which, a restricted material may be used or possessed in different areas of the state, and may prohibit its use or possession in those areas. This usage shall be limited to those situations in which it is reasonably certain that no injury will result, or no nonrestricted material or procedure is equally effective and practical. They may provide that a restricted material shall be used only under permit of the commissioner or under the direct supervision of the commissioner, subject to any of the following limitations:

- (a) In certain areas.
- (b) Under certain conditions relating to safety.
- (c) When used in excess of certain quantities or concentrations.
- (d) When used in certain mixtures.
- (e) In compliance with the industrial safety orders of the Department of Industrial Relations and any order of the director or

commissioner.

(f) On agreement by the owner or person in possession of the property to be treated to comply with certain conditions.

(g) Any other limitation the director determines to be necessary to effectuate the purposes of this chapter.

This section shall become operative on January 1, 1991.

14006.5. Except as provided in Section 14006.6, no person shall use or possess any pesticide designated as a restricted material for any agricultural use except under a written permit of the commissioner. No permit shall be issued for any restricted material for use in any manner other than pursuant to its registration without the approval of the director. In addition, no permit shall be granted if the commissioner determines that the provisions of subdivision (a), (b), or (c) of Section 12825 would be applicable to the proposed use.

Before issuing a permit for any pesticide the commissioner shall consider local conditions including, but not limited to, the following:

(a) Use in vicinity of schools, dwellings, hospitals, recreational areas, and livestock enclosures.

(b) Problems related to heterogeneous planting of crops.

(c) Applications of materials known to create severe resurgence or secondary pest problems without compensating control of pest species.

(d) Meteorological conditions for use.

(e) Timing of applications in relation to bee activity.

(f) Provisions for proper storage of pesticides and disposal of containers.

Each permit issued for any pesticide shall include conditions for use in writing.

14006.6. (a) A permit shall not be required for the agricultural use of any pesticide not designated as a restricted material unless the commissioner determines that its use will present an undue hazard when used under local conditions.

(b) Permits for the use of pesticides shall not be required of persons found to be qualified by the director who are engaged in experimentation or research on the use of pesticides, where no charge is made to the person in charge of the property treated.

(c) A permit shall not be required for the possession of pesticides by a registrant, as defined in Section 12755, or by a licensed pest control dealer when operating pursuant to the registration or the license; by commercial warehouses storing pesticides; or for the possession and use of these materials when specifically exempted by regulation of the director in cases in which the mitigation measures provided by the permit system are not necessary to avoid injury to the environment or to any person, animal, crop, or property.

(d) Permits for the use of pesticides shall not be required of persons operating pursuant to a license issued under Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code.

14006.7. The director shall designate, by regulation, a list of "exempt materials" for which the director finds additional restrictions, other than registration and labeling requirements, are not necessary to carry out the purposes of this chapter. The exempt

materials may be used without a permit if the use conforms with the registered label or printed instructions.

14007. (a) Every permit that is issued under the regulations adopted pursuant to this chapter is conditioned upon compliance with this code and regulations adopted pursuant thereto and upon other specified conditions that may be required to accomplish the purposes of this chapter.

(b) Any permit may be issued for a one-year period. Permits issued for perennial agricultural plantings, nonproduction agricultural sites, or nonagricultural sites may be issued for up to a three-year period.

(c) The permittee or a designated agent shall report immediately any change in the information submitted or pertinent to the issuance of a valid permit to the appropriate commissioner.

14008. Any permit may be refused, revoked, or suspended for violation of any of the conditions of the permit, or of a previous permit, or for violation of any provision of this division or of the regulations that are issued pursuant to it, or for the failure to pay a civil penalty or comply with any lawful order of the commissioner, once that order is final.

14009. (a) Any interested person may request the commissioner to review his or her action in issuing, refusing, revoking, suspending, or conditioning a permit to use or possess a restricted material. The commissioner shall review the request and issue a written decision in response to the request to review within 10 days of receipt of the request, or as soon as practicable. The commissioner may affirm, modify, or cancel the permit action reviewed. A directly affected person may thereafter appeal to the director to review the commissioner's action.

(b) The commissioner and director shall conduct each review in an expeditious manner so that needed pest control measures are not adversely affected.

(c) Each request for review shall be submitted in writing to the commissioner by the person requesting the review and shall include all of the following:

(1) The location of persons, property, or areas that would be affected and the location of property to be treated.

(2) The name of the restricted material involved.

(3) The name and address of the person in charge of the property to be treated, if different from the person filing the request for review.

(4) Any other information that the person filing the request for review or the commissioner determines to be relevant.

(d) In an appeal of a commissioner's action to the director, the issues are limited to any of the following:

(1) Whether the proposed permit use is consistent with applicable pesticide label restrictions and applicable regulations.

(2) Whether the commissioner properly considered the provisions of Section 14006.5.

(3) Whether the commissioner abused his or her discretion in issuing, refusing, revoking, or conditioning the permit.

(e) The director shall act on these appeals within 10 days of receipt thereof or as soon thereafter as is practicable. The director may stay the operation of a permit until his or her review

is complete.

(f) (1) Prior to conducting a public review, the director shall notify directly affected persons at least 72 hours in advance of the location and time of the public review.

(2) Before acting on an appeal, the director shall, in a specified location open to the public, review the information provided to him or her as specified in this section if requested to do so in writing by any interested person.

(3) The director may request additional testimony or other evidence specified in this section at the public review from interested persons.

(g) Judicial review of any decision by the director pursuant to this section shall be pursuant to Section 1094.5 of the Code of Civil Procedure. Review shall be limited to whether the proposed permit use is consistent with applicable pesticide label restrictions and regulations and whether the director abused his or her discretion.

14010. It is unlawful for any person to sell or deliver any restricted material to any person that is required by regulations adopted by the director to have a permit to possess or use the restricted material unless the permittee, or the permittee's agent to whom delivery is made, provides to the seller or the person delivering the restricted material a copy of a permit which authorizes possession or use of the kind and quantity of the restricted material on the date the restricted material is delivered.

14011. It is unlawful for any person to apply any restricted material for which regulations have been adopted except as provided in the regulations which are adopted by the director.

14011.5. Except as may be provided in regulations adopted by the director, a pesticide use report shall be submitted to the commissioner, on a form prescribed by the director, within seven days after each use of a restricted material.

14012. (a) Any person who is required to register pesticides under Article 4 (commencing with Section 12811) of Chapter 2, and who sells or transfers any restricted material, shall keep accurate records of the amount and type of material involved in every sale or transfer of any restricted material. The records shall be open during ordinary business hours to the inspection of the director.

(b) Each commissioner shall submit to the director a copy of each pesticide use report received pursuant to Section 14011.5, and any other relevant information the director may require. Copies of the reports from the commissioners shall be rendered to the director within one calendar month after they are received.

The contents of these reports shall be summarized quarterly by the director as to the type of material and amounts, and the summaries shall be made a public record. The director may publish or distribute the summaries.

14015. Except as provided by regulation adopted by the director, a restricted material shall only be possessed or used by, or under the direct supervision of, a private applicator, who is certified pursuant to Section 14093, or a certified commercial applicator, as defined by Section 6000 of Title 3 of the California Code of Regulations.

## **Article 1.5. Pesticides**

14021. (a) As used in this article, "pesticide" is defined in Section 12753.

(b) For purposes of this article, "toxic air contaminant" means an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health. Pesticides that have been identified as hazardous air pollutants pursuant to Section 7412 of Title 42 of the United States Code shall be identified by the director as toxic air contaminants.

14022. (a) In consultation with the State Department of Health Services and the State Air Resources Board, the director shall evaluate the health effects of pesticides which may be or are emitted into the ambient air of California and which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health. Upon request of the State Air Resources Board, the director shall include a pesticide for evaluation.

(b) The director shall complete the evaluation of a pesticide within 90 days after receiving the scientific data specified in subdivision (c) from the State Department of Health Services and the State Air Resources Board. The director may extend the 90-day deadline for a period not to exceed 30 days if the director transmits to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline.

(c) In conducting this evaluation, the director shall consider all available scientific data, including, but not limited to, relevant data provided by the State Department of Health Services, the Occupational Safety and Health Division of the Department of Industrial Relations, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations. At the request of the director, the State Air Resources Board shall document the level of airborne emissions and the State Department of Health Services shall provide an assessment of related health effects of pesticides which may be determined to pose a present or potential hazard and each agency shall provide technical assistance to the department as it conducts its evaluation.

(d) The director may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, or used by the person to whom the request is made, in order to carry out his or her responsibilities pursuant to this chapter. Any person providing information pursuant to this subdivision shall, at the request of the director, identify that portion of the information submitted to the department which is a trade secret and, upon the request of the director, shall provide documentation to support the claim of the trade secret. Information supplied which is a trade secret, as specified in Section 6254.7 of the Government Code, and which is so marked at the time of submission shall not be released to the public by the director, except in accordance with Section 1060 of the Evidence Code and Section 21160

of the Public Resources Code.

(e) The director shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the pesticide in California, persistence in the atmosphere, and ambient concentrations in the community.

14023. (a) Upon completion of the evaluation conducted pursuant to Section 14022, the director shall, in consultation and with the participation of the State Department of Health Services, prepare a report on the health effects of the pesticide which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health due to airborne emission from its use. The report shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans, resulting from current or anticipated exposure. The report shall include the findings of the State Department of Health Services. The report shall be made available to the public, subject to subdivision (d) of Section 14022.

(b) The report prepared pursuant to subdivision (a) shall be formally reviewed by the scientific review panel established according to Section 39670 of the Health and Safety Code. The director shall also make available the data deemed necessary to the scientific review panel, according to departmental procedures established to ensure confidentiality of proprietary information. The panel shall review, as appropriate, the scientific data on which the report is based, the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based. The panel shall submit its written findings to the director within 45 days after receiving the report, but it may petition the director for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is seriously deficient, the report shall be returned to the director who shall revise and resubmit the report, within 30 days following receipt of the panel's determination, to the panel prior to development of emission control measures.

(d) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (b), the director shall prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a pesticide is a toxic air contaminant. After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall list, by regulation, pesticides determined to be toxic air contaminants.

(e) The director shall determine, in consultation with the State Department of Health Services, the State Air Resources Board, and the air pollution control districts or air quality management districts in the affected counties, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant pursuant to subdivision (d). Any person may submit written information for consideration by the director in making determinations on control measures.

14024. (a) For those pesticides for which a need for control measures has been determined pursuant to subdivision (e) of Section 14023 and pursuant to provisions of this code, the director, in consultation with the agricultural commissioners and air pollution control districts and air quality management districts in the affected counties, shall develop control measures designed to reduce emissions sufficiently so that the source will not expose the public to the levels of exposure which may cause or contribute to significant adverse health effects. Where no demonstrable safe level or threshold of significant adverse health effects has been established by the director, the control measures shall be designed to adequately prevent an endangerment of public health through the application of best practicable control techniques.

(b) Best practicable control techniques may include, but are not limited to, the following:

- (1) Label amendments.
- (2) Applicator training.
- (3) Restrictions on use patterns or locations.
- (4) Changes in application procedures.
- (5) Reclassification as a restricted material.
- (6) Cancellation.

(c) After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall adopt, by regulation, control measures, including application of the best practicable control techniques enumerated in subdivision (b) or any other best applicable control technique, for those pesticides for which a need has been determined.

14025. Any person may petition the department to review a determination made pursuant to this article. The petition shall specify the additional scientific evidence regarding the health effects of a pesticide which was not available at the time the original determination was made and any other evidence which would justify a revised determination.

14026. Nothing in this article shall be construed to limit or expand the department's authority regarding pesticides which are not determined to be toxic air contaminants.

14027. (a) Notwithstanding Section 12998, any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to this article is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. In assessing a civil penalty under this article, the court shall consider the appropriateness of the penalty with respect to the following factors:

- (1) The size of the business of the person being charged.
- (2) The gravity of the violation.
- (3) The good faith of the person being charged.
- (4) The history of previous violations.

Any money recovered under this section shall be paid into the Department of Food and Agriculture Fund for use by the department in administering this division and Division 6 (commencing with Section 11401).

(b) Liability may be imposed under subdivision (a) only if the

department establishes that the violation was caused by an act which was the result of intentional or negligent conduct by the person accused of the violation.

## **Article 2. 2,4-D and Other Herbicides**

14031. As used in this article, "2,4-D" means any form of 2,4-dichlorophenoxyacetic acid.

14032. Except as otherwise provided in this article and in the regulations which are adopted by the director, it is unlawful for any person to use any form of 2,4-D or any other herbicide which the director finds and determines, after hearing, is injurious to any crop.

14033. The director shall adopt regulations that govern the use of 2,4-D and any other herbicide which he finds and determines is injurious to any crop that is being grown in any area of the state. The regulations of the director may prescribe the time when, and the conditions under which, a restricted herbicide may be used in different areas of the state. They may provide that a restricted herbicide shall be used only under permit of the commissioner or under the direct supervision of the commissioner, subject to any of the following limitations:

- (a) In certain areas.
- (b) In excess of certain quantities or concentrations.

14034. This article does not relieve any person from liability for any damage to the property of another person which is caused by the use of any herbicide which is named in the regulations which are adopted by the director.

## **Article 3. Compound 1080**

14061. As used in this article, "Compound 1080" means sodium fluoroacetate or any preparation of sodium fluoroacetate.

14062. Except as otherwise provided in this article, it is unlawful for any person to sell, use, or possess any Compound 1080.

14063. Subject to regulations of the director, any of the following persons may sell, use, or possess Compound 1080 for the purposes or uses that are specified:

(a) Any federal, state, county, or municipal officer or employee, in his or her official capacity, or any person under the immediate supervision of that officer or employee, may possess Compound 1080 for use for pest control purposes.

(b) Any research or chemical laboratory may possess Compound 1080 for use for the purposes of the laboratory.

(c) Any person duly licensed as a structural pest control operator under Chapter 14 (commencing with Section 8500), Division 3 of the Business and Professions Code, may possess Compound 1080 for use in

his or her business.

(d) Any wholesaler or jobber of any pesticide may sell Compound 1080 to any person included within the above classifications, or for export.

#### **Article 4. Methyl Bromide and Chloropicrin**

14081. The director, after investigation and hearing, shall adopt regulations by April 1, 1989, which govern the use of methyl bromide and chloropicrin as field fumigants.

14082. The director may prescribe the time when, and the conditions under which, methyl bromide and chloropicrin may be used in different areas of the state.

#### **CHAPTER 3.4 PRIVATE APPLICATOR CERTIFICATION**

14090. It is unlawful for a private applicator to possess, use, or supervise the use of a restricted material in accordance with Section 14015 unless that person has a valid private applicator certificate.

14091. The application for a private applicator certificate or a renewal of the certificate shall be on a form prescribed by the director. Each application shall state the name and address of the applicant and any other information required by the director.

14092. (a) Applicants shall be examined on the requirements of statutes and regulations concerning pesticide use and pest control operations including, but not limited to, knowledge of all of the following:

- (1) Label directions and restrictions on use.
  - (2) Calibration.
  - (3) Pest control equipment.
  - (4) Pest problems and identification.
  - (5) Worker protection, including protective clothing and equipment.
  - (6) Environmentally sensitive areas.
- (b) The examination shall be in written form and shall be prepared by the director and administered by the commissioner, or the director in any county where there is no commissioner. An oral examination may be administered in those situations where, in the opinion of the commissioner, a written examination would not accurately measure the understanding of the applicant.
- (c) A passing score for the examination is 70 percent or above.

14093. The commissioner, or the director in any county where there is no commissioner, shall issue a private applicator certificate to each applicant who passes the examination.

14094. If a passing score of 70 percent is not achieved, the applicant may not retake the examination for seven calendar days.

14095. A private applicator certificate shall be issued for a

period of three years except that the initial term of a private applicator certificate shall expire as follows:

(a) Certificates issued to private applicators on or after January 1, 1997, with surnames beginning with A to H, inclusive, shall expire on December 31 of each third year following December 31, 1997.

(b) Certificates issued to private applicators on or after January 1, 1997, with surnames beginning with I to Q, inclusive, shall expire on December 31 of each third year following December 31, 1998.

(c) Certificates issued to private applicators on or after January 1, 1997, with surnames beginning with R to Z, inclusive, shall expire on December 31 of each third year following December 31, 1999.

14096. Certified private applicators may renew their certificate for a period of three years by completing the continuing education requirement as prescribed by the director, by regulation, or by passing an examination.

14097. The commissioner, or the director in a county where there is no commissioner, may establish a program to certify employees other than the operator of the property, or other than the operator's authorized representative. The commissioner's or the director's program shall be conducted in accordance with this chapter.

14098. (a) A private applicator certificate may be refused, revoked, or suspended by the commissioner or director for any of the following reasons:

(1) Failure to comply with any applicable provision of this division or any regulation adopted pursuant thereto.

(2) Failure to supervise the use of a restricted material in a manner that ensures compliance with this division or any regulation adopted pursuant thereto.

(3) Making any false or fraudulent report.

(b) Any action by the commissioner or the director pursuant to subdivision (a) may be appealed in a manner consistent with the procedures for appealing the suspension of a restricted material permit as prescribed in Section 11512.5.

14099.5. This chapter shall become operative on January 1, 1997.

## **CHAPTER 7 STRUCTURAL PEST CONTROL**

15201. The Legislature hereby finds and declares that it is the joint responsibility of the Department of Food and Agriculture, the commissioner of each county under the direction and supervision of the director, and the Structural Pest Control Board to regulate the activities of structural pest control licensees. The Structural Pest Control Board has responsibility for licensing persons and companies engaged in structural pest control work. The department has primary responsibility for enforcing pesticide laws and regulations.

15202. In addition to the enforcement authority granted to the director and commissioners by this code, a commissioner, when acting pursuant to Section 8616.4 of the Business and Professions Code, may suspend the right of a structural pest control licensee to make

pesticide applications in the county for up to three working days or levy a fine upon a licensee or unlicensed individual acting as a licensee as specified in Section 8617 of the Business and Professions Code. Appeals from these actions shall be to the Disciplinary Review Committee according to the procedures provided in Section 8662 of the Business and Professions Code.

15203. The director may adopt regulations to carry out the provisions of this chapter. The director shall consult with the Structural Pest Control Board when developing regulations that pertain to the use of pesticides by structural pest control licensees.

15204. (a) Each licensed structural pest control operator shall notify the commissioner prior to operating a structural pest control business in the county. The notification shall cover a calendar year, unless a shorter time is specified by the structural pest control licensee. A fee may also be required at the time of notification. The fee shall be set by the county board of supervisors, except that in no case shall the fee exceed the actual cost of processing the notification or ten dollars (\$10), whichever is less. Payment of the fee shall be due by the date designated by the commissioner.

(b) Each notification shall be in a form prescribed by the director after consulting with the Structural Pest Control Board and commissioners and shall be limited to the structural pest control licensee's name and address (including each place of business in the county), telephone numbers, responsible persons, and the type of pest control to be conducted.

(c) Each structural pest control licensee who intends to conduct fumigation operations may be required to appear in person at the office of the commissioner to complete notification.

(d) If ordered by the commissioner, other structural pest control licensees shall appear in person at the office of the commissioner to complete notification.

15205. (a) Each registered structural pest control company shall make all existing records pertaining to pesticide and device use available to the director, the Structural Pest Control Board, or commissioner upon demand at the headquarters of the business during normal business hours. A registered structural pest control company or licensee may not prohibit onsite inspection for compliance with the Business and Professions Code and this division regarding pesticides and structural pest control devices and regulations adopted pursuant thereto. Except as provided in Section 8505.5 of the Business and Professions Code, nothing in this section shall be construed as requiring a registered structural pest control company or licensee to provide advance notice of the date, time, location of the application, type of device or pesticide application, or any other related information unless the information is contained in existing records available to the registered company or licensee, in which case the director, the Structural Pest Control Board, or commissioner may require that this information be produced at the company's place of business.

(b) Information and documents gathered by the director, the Structural Pest Control Board, or the commissioner pursuant to this section that are protected from disclosure under the California

Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall remain confidential while in the director's, the board's, or the commissioner's possession.

(c) (1) "Device," for purposes of this section, means any method, instrument, or contrivance intended to be used to prevent, eliminate, destroy, repel, attract, or mitigate any wood destroying pest, but does not include firearms, pesticides as defined in Section 12753, or equipment used for the application of pesticides when sold separately from a pesticide.

(2) "Wood destroying pest," for purposes of this section, includes, but is not limited to, insects such as wood borers and termites. "Wood destroying pest" does not include wood-decaying fungi, general household pests such as cockroaches, or vertebrate pests such as rats and mice.

15206. If the director receives a notice pursuant to Section 8616.6 of the Business and Professions Code, he or she shall investigate the actions which caused the filing of the notice and take appropriate action as authorized in this code.

15206.5. Regulations adopted pursuant to Section 11503 are not applicable to this chapter.

15206.6. The director and the Structural Pest Control Board shall jointly develop and concur in the list of the types of violations that the commissioners shall refer to the board for disciplinary action.

## **CHAPTER 7.5 STRUCTURAL PEST CONTROL DEVICES**

### **Article 1. Definitions**

15300. For the purposes of this chapter, the following definitions apply:

(a) "Structural pest control device" or "device" means any method, instrument, or contrivance intended to be used to prevent, eliminate, destroy, repel, attract, or mitigate any wood destroying pest, but does not include firearms, pesticides as defined in Section 12753, or equipment used for the application of pesticides when sold separately from a pesticide.

(b) "Wood destroying pest" includes, but is not limited to, insects such as wood borers and termites. "Wood destroying pest" does not include wood-decaying fungi, general household pests such as cockroaches, or vertebrate pests such as rats and mice.

### **Article 2. General Provisions**

15301. (a) On and after July 1, 2001, it is unlawful for any person directly, or through another, to manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use any device in this state that is not registered pursuant to this chapter, or for which the registration has been

suspended or canceled, except as provided in subdivision (b), any other provision of this chapter, regulations adopted by the director, or a notice or order of suspension or cancellation of a device.

(b) For devices in use in California prior to January 1, 2001, the director may grant reasonable extensions of time for the submission or review, or both the submission and review, of data in support of an application for registration. Before the director may grant an extension of time, the applicant shall have made a good faith effort to comply with the requirements of this chapter and shall demonstrate to the satisfaction of the director that circumstances beyond the applicant's control were the primary cause of the delay.

(c) This section does not apply to any device manufactured solely for export outside this state and which is so exported.

15302. The director shall regulate structural pest control devices.

15303. The director may adopt, amend, repeal, and enforce regulations relating to the regulation of devices and the administration of this chapter. When adopting regulations pursuant to this chapter, the director shall consider the safe use of devices and safe working conditions for persons handling, storing, or using devices or working in and about device treated areas.

### **Article 3. Device Registration**

15305. (a) The director shall endeavor to prevent and eliminate from use in this state any device that meets any of the following criteria:

(1) The device endangers human health or safety, property, or the environment.

(2) The device is not beneficial or efficacious for the purposes for which it is manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used.

(3) Is misrepresented.

(b) The director may establish specific criteria to evaluate a device. The director may establish performance standards and tests of structural pest control devices, which are to be conducted by the applicant for registration, registrant, or parties interested in the registration of the device.

(c) Before a device is registered, the director shall conduct, or cause to be conducted, a thorough and timely evaluation of the device. The director may impose reporting requirements and restrictions upon the use of a device, including, but not limited to, limitations on area and manner of application. The director may reevaluate any registered device.

15306. The director shall not determine a device to be beneficial or efficacious if any of the following exists:

(a) The ability of the device to control pests falls below the standard or quality that the device is represented to have, or the device is of little or no value for the purpose for which it is intended.

(b) Any component or subsystem that is necessary to the effectiveness of the device has been wholly or partially omitted in

its manufacture, or other materials have been substituted for that component or subsystem.

15307. Every manufacturer of, importer of, vender of, or dealer in, any device, except a dealer or agent that sells a registered device, shall obtain a certificate of device registration from the director before the device is manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used, in this state, unless the device is used under a valid device research permit pursuant to Section 15314.

15308. Each applicant for registration of a device, at a minimum, shall submit all of the following:

(a) A completed application form prescribed by the director.

(b) Proposed labeling for the device.

(c) Valid data supporting each claim on the proposed label and supporting the safety of the device for each proposed labeled use.

(d) A nonrefundable application fee in the amount of two hundred dollars (\$200). The application fees shall be deposited in the Department of Pesticide Regulation Fund and shall be available, upon appropriation, for use by the department in administering this division.

(e) Any other information required by regulation of the director.

15309. Within a timely manner after receipt of the information and fee specified in Section 15308, the director shall do one or more of the following:

(a) Issue a certificate of device registration pursuant to Section 15310.

(b) Notify the applicant that the submission is inadequate and specify the additional data that must be submitted and reviewed before a registration decision is rendered. In issuing a notification pursuant to this subdivision, the director may specify a reasonable timeframe for the submission of the additional data, moneys, labeling, or information to avoid a requirement for submission of a new application and application fee.

(c) Notify the applicant of the director's decision to deny registration.

15310. If an applicant for registration of a device complies with this chapter and the regulations that are adopted pursuant to this chapter, the director shall register the device and issue a certificate of device registration to the applicant authorizing the manufacture and sale of the device in this state.

15311. If the director finds that registration must be denied due to noncompliance with this chapter or the regulations that are adopted pursuant to this chapter, the director shall deny registration. Upon the request of the applicant, the director may hold a hearing to reconsider the director's decision to deny the application.

15312. Each applicant for a certificate of device registration shall inform the director of every brand and trademark of a device that the applicant intends to manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use. The director may require an applicant to identify

each component in the device.

15313. The registrant of a device shall immediately notify the director of any proposed change to the device including, but not limited to, labeling composition, configuration method of application, and use of the device. The director shall determine whether the changes require the director's approval before the changed device may be manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used in this state. The director shall notify the registrant of this determination.

15314. The director may issue a device research permit for the scientific evaluation of new devices for a limited period of time determined by the director.

15315. (a) Pursuant to Sections 15305 and 15306, after providing notice to the device registrant or applicant of an opportunity to be heard, the director may cancel the registration of, or refuse to register, any device that meets any of the following criteria:

(1) The director determines that the device has demonstrated serious uncontrollable adverse effects on human health or safety, property, or the environment.

(2) The director determines that the use of the device is of less public value or greater detriment to the environment than the benefit received by its use.

(3) The director determines that a false or misleading statement is made or implied by the registrant or his or her agent, or the applicant for registration, either verbally or in writing, or in the form of any advertising literature concerning the device.

(4) The director determines that the registrant, or his or her agent, or applicant for registration has failed to report any adverse effect or risk as required by Section 15316.

(5) The director determines that the registrant has failed to comply with the requirements of a reevaluation of the registrant's device.

(6) The director determines that false information relating to the testing of the device, including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, was submitted to the director.

(b) When taking action or making a determination pursuant to this section, the director may require practical demonstrations and scientific testing that the director finds are necessary to determine the facts. The demonstrations or testing shall be conducted by the applicant for registration, registrant, or parties interested in the device registration.

15316. If, during the registration process, or at any time after the registration of a device, the applicant or registrant has factual or scientific information showing any adverse effect or risk of the device to human health or safety, property, or the environment that has not been previously submitted to the director, the applicant for registration or the registrant, as the case may be, shall immediately submit the information to the director.

15317. If the director has reason to believe that any of the conditions stated in Section 15315 are applicable to any registered

device and that the use or continued use of the device constitutes an immediate substantial danger to human health or safety, property, or the environment, the director, after notice to the registrant, may suspend the registration of that device pending a hearing and final decision. If the director does not file an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code within 30 days from the date of the suspension, the suspension shall be terminated.

15318. The director may cancel a certificate of device registration, or refuse to issue a certificate of device registration to any manufacturer, importer, or dealer in any device that repeatedly violates this chapter or the regulations of the director.

15319. Action by the director pursuant to Section 15305, 15311, 15315, 15317, or 15318 is not a condition precedent to the institution of any action to prosecute or levy a civil penalty for a violation of this chapter or regulations adopted pursuant to this chapter.

15320. (a) A registrant at any time may request that the registration of any of its devices be voluntarily canceled. The request shall be in writing to the director and shall include a waiver of the registrant's right to a hearing on the cancellation.

(b) The director shall mail a notice of voluntary cancellation of registration of the device to the registrant. The notice shall specify the effective date of the cancellation.

#### **Article 4. Labeling and Warranty**

15325. The registrant of a device shall furnish printed directions for use on the label or shall enclose the printed directions with the device. The device label shall state the name, brand, or trademark, if any, under which the device will be sold and the name and address of the device manufacturer, importer, dealer, or vendor.

15326. (a) The registrant of a device may print limitations of warranty on the label with respect to the use of the device, as the registrant considers proper.

(b) Notwithstanding subdivision (a), no limitations of warranty by the device manufacturer, registrant, user, seller, lessor, or licensor shall exclude or waive either of the following implied warranties:

(1) That the device corresponds to all claims and descriptions that the registrant has made in print regarding the device.

(2) That the device is reasonably fit for use for any purpose for which it is intended according to any printed statement of the registrant.

15327. Except as otherwise provided in this chapter, the registrant is not liable for any injury or damage that is suffered solely by reason of any of the following:

(a) The use of the device for a purpose different from that represented by the label.

(b) The use of the device contrary to the printed directions of

the registrant.

## **Article 5. Seizure**

15330. (a) If any device is determined to be manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used in violation of any of the provisions of this chapter or any regulations adopted pursuant to this chapter, or if the device has been, or is intended to be, manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used in violation of those provisions, or when the registration of the device has been canceled by a final order or has been suspended, the director may issue a written "cease and desist" order to any person who owns, controls, or has custody of the device. After receipt of the cease and desist order, the receiver of the order shall not manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use the device described in the order except in accordance with the provisions of the order.

(b) The director may seize or quarantine any device that meets any of the following criteria:

(1) The device is not registered pursuant to this chapter or any of the regulations adopted pursuant to this chapter.

(2) Any of the claims made for the device or any of the directions for its use differs in substance from the representation made in connection with its registration.

(3) The device is misbranded or mislabeled.

(4) When used in accordance with the requirements imposed under this chapter and as directed by the labeling or printed directions, the device nevertheless causes unreasonable adverse effects on human health, human safety, human welfare, property, or the environment.

(5) The device is manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used in violation of a cease and desist order.

(6) The device is otherwise not in conformity with this chapter or the regulations adopted pursuant to it.

(c) After a device is seized or quarantined, the department shall provide the person from whom the device was seized or quarantined an opportunity for a hearing.

(1) If the director determines, after a hearing is held if requested, that the device can be brought into compliance with the requirements of this chapter and the regulations adopted pursuant to this chapter, the director shall hold the device or continue the quarantine until the requirements of this chapter and the regulations adopted pursuant to this chapter have been complied with, at which time the device shall be released to the person from whom it was seized or the quarantine shall be lifted, as the case may be.

(2) If the director determines, after a hearing is held if requested, that the device cannot be brought into compliance with the requirements of this chapter and the regulations adopted pursuant to this chapter, the director shall order the owner of the device to dispose of it in a manner prescribed by the director to protect human health, human safety, and human welfare and to accomplish the purposes of this chapter.

## **Article 6. Device Usage**

15331. The use of any device shall not conflict with the label on the device as registered pursuant to this chapter.

## **Article 7. Violations**

15340. (a) Except as provided by subdivision (c), it is unlawful for any person directly, indirectly, or through another, to manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use any of the following:

(1) Any device that is not registered pursuant to this chapter, or whose registration has been canceled or suspended, except to the extent that the sale, lease, or other provision has been authorized by the director.

(2) Any registered device if any claim made for it as a part of its distribution or sale substantially differs from any claim made for it as a part of the information required in connection with its registration.

(3) Any registered device the configuration of which differs at the time of its sale, lease or other provision, or use from its configuration as described in the information required in connection with its registration.

(4) Any device that is misbranded or mislabeled.

(b) It is unlawful for any person directly, indirectly, or through another, to do any of the following:

(1) Violate any provision of this chapter and any rules or regulations adopted by the director pursuant to this chapter.

(2) Manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use any device, except in compliance with this chapter and regulations adopted pursuant to this chapter.

(3) Detach, alter, deface, or destroy, in whole or in part, any device labeling.

(4) Refuse to prepare, maintain, or submit any records or reports required by the director under this chapter or regulations adopted pursuant to this chapter for a registered device.

(5) Use any registered device in a manner inconsistent with its registration and labeling.

(6) Use any device that is under a valid device research permit contrary to the provisions of that permit.

(7) Violate any order issued pursuant to this chapter.

(8) Knowingly falsify all or part of any application for registration, application for a device research permit, any information submitted to the director pursuant to this chapter, any records required to be maintained pursuant to this chapter, or any report filed under this chapter.

(9) Falsify all or part of any information relating to the testing of any device, including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, submitted to the director, or that the person knows will be furnished to the director or will become a part of any records required to be maintained by this chapter or

regulations adopted pursuant to this chapter.

(10) Submit to the director data known to be false in support of a registration.

(c) It is not a violation of subdivision (a) for any person to manufacture for sale, transport, or use any device pursuant to a valid research permit in effect with respect to that device and that use or possession.