

## TABLE OF CONTENTS

Chapter 487, FS - "Pesticides"	pp. 1-26
Chapter 5E-2, FAC - "Pesticides"	pp. 232-240 (of FAC)
Chapter 5E-9, FAC - "Licensed Pesticide Applicators and Dealers"	pp. 266-277 (of FAC)

## **CHAPTER 487**

### **PESTICIDES**

- 487.011 Short title; administration.
- 487.012 Declaration of purpose.
- 487.021 Definitions.
- 487.025 Misbranding.
- 487.031 Prohibited acts.
- 487.041 Registration.
- 487.042 Restricted-use pesticides; designation.
- 487.0435 License classification.
- 487.0437 Direct infusion of chlorine gas.
- 487.044 Certification; examination.
- 487.045 Fees.
- 487.046 Application; licensure.
- 487.047 Nonresident license; reciprocal agreement; authorized purchase.
- 487.048 Dealers license; records.
- 487.049 Renewal; late fee; recertification.
- 487.051 Administration; rules; procedure.
- 487.0615 Pesticide Review Council.
- 487.064 Antisiphon requirements for irrigation systems.
- 487.071 Enforcement, inspection, sampling, and analysis.
- 487.081 Exemptions.

- 487.091 Tolerances, deficiencies, and penalties.
- 487.101 Stop-sate, stop-use, removal, or hold orders.
- 487.111 Seizure, condemnation, and sale.
- 487.13 Cooperation.
- 487.15 Reclamation, reimbursement, and disposal.
- 487.156 Governmental agencies.
- 487.1585 Duties of licensee with respect to unlicensed applicators and mixer-loaders and field workers.
- 487.159 Damage or injury to property, animal, or person; mandatory report of damage or injury; time for filing; failure to file.
- 487.160 Records; report.
- 487.16 1 Exemptions, nonagricultural pest control and research.
- 487.163 Information; interagency cooperation.
- 487.171 Classification of antifouling paint containing organotin compounds as restricted-use pesticides; prohibition of distribution and sale.
- 487.172 Educational program.
- 487.175 Penalties; administrative fine; injunction.

**487.011 Short title; administration.** This chapter may be cited as the “Florida Pesticide Law” and shall be administered by the Department of Agriculture and Consumer Services.

History.--s. 1, ch. 65-457; ss. 1, 37, ch. 92-115; s. 2, ch. 94-233; s. 8, ch. 2000-154.

**487.012 Declaration of purpose.** The purpose of this chapter is to regulate the distribution, sale, and use of pesticides, except as provided in chapters 388 and 482, and to protect people and the environment from the adverse effects of pesticides.

History.--s. 3, ch. 74-247; s. 8, ch. 79-210; s. 2, ch. 81-318; ss. 14, 15, ch. 82-167; ss. 2, 37, ch. 92-115; s. 3, ch. 94-233; s. 9, ch. 2000-154.

Note.--Former s. 487.152.

**487.021 Definitions.** For the purpose of this chapter:

(1) “Acceptable release rate” means a measured release rate not exceeding 4.0 micrograms per square centimeter per day at steady state conditions as determined in accordance with a United States Environmental Protection Agency testing data call-in notice of July 29, 1986, on tributyltin in antifouling paints under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. s. 136, or at a rate established by the department.

(2) “Active ingredient” means:

- (a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.
- (b) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior, of ornamental or crop plants or the produce thereof.

- (c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.
  - (d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.
- (3) “Added ingredient” means any plant nutrient or plant regulator added to the mixture which is not an active pesticidal ingredient, but which the manufacturer wishes to show on the label.
- (4) “Adulterated” applies to any pesticide if its strength or purity falls below or is in excess of the professed standard of quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide or if any valuable constituent of the pesticide has been wholly or in part abstracted.
- (5) “Advertisement” means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of pesticides.
- (6) “Age of majority” means any natural person 18 years of age or older, or an emancipated minor.
- (7) “Aircraft” means any machine designed for flight and for use in applying pesticides.
- (8) “Animal” means all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish, and shellfish.
- (9) “Antidote” means the most practical immediate treatment for poisoning and includes first aid treatment.
- (10) “Antifouling paint” means a coating, paint, or treatment that is intended for use as a pesticide, as defined in this section, to control freshwater or marine fouling organisms.
- (11) “Antisiphon device” means a safety device used to prevent the backflow of a mixture of water and chemicals into the water supply.
- (12) “Batch” or “lot” means a quantity of pesticide produced or packaged and readily identified by numbers, letters, or other symbols.
- (13) “Brand” means the name, number, trademark, or any other designation which distinguishes one pesticide product from another.
- (14) “Certification” means the recognition by the department that an individual is a competent pesticide applicator and, thus, is eligible for licensure in one or more of the designated license types and categories.
- (15) “Certified applicator” means any individual who has been recognized by the department as a competent pesticide applicator and, thus, is eligible to apply for licensure in one or more of the designated license types and categories.
- (16) “Commercial applicator” means an individual who has reached the age of majority and is

licensed by the department to use or supervise the use of any restricted-use pesticide for any purpose on any property other than as provided by the definitions of “private applicator,” “product specific applicator,” or “public applicator,” whether or not the individual is a private applicator with respect to some uses.

(17) “Dealer” means any person, other than the manufacturer or distributor, who offers for sale, sells, barter, or otherwise supplies pesticides to the ultimate user or consumer.

(18) “Deficiency” means the amount of an active ingredient of a pesticide by which it fails to come up to its guaranteed analysis when analyzed.

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

(20) “Department” means the Department of Agriculture and Consumer Services or its authorized representative.

(21) “Desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(22) “Device” means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating, any pest or other form of plant or animal life (other than human and other than bacteria, virus, or other microorganism on or in living humans or other living animals); but not including equipment used for the application of pesticides when sold separately.

(23) “Distribute” means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(24) “Distributor” means any person who offers for sale, holds for sale, sells, barter, or supplies pesticides in this state.

(25) “Emergency exemption” means an exemption as authorized in s. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

(26) “Environment” means all water, air, land, plants, and animals, and their relationships with one another.

(27) “Equipment” means any type of ground, aquatic, or aerial device used to apply any pesticide on land, and on anything that may be growing, habituating, or stored on or in the land. Equipment does not include any pressurized hand-size household device used to apply any pesticide, or any other device where the person applying the pesticide is the source of power for applying the pesticide.

(28) “Excess” means the amount of an active ingredient of a pesticide found by analysis to be over the guaranteed amount.

(29) “Experimental use permit” means a permit issued by the department or by the United States Environmental Protection Agency as authorized in s. 5 of the Federal Insecticide, Fungicide,

and  
Rodenticide Act.

(30) "Fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts), as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living humans or other animals.

(31) "Highly toxic" means any highly poisonous pesticide as determined by the rules promulgated pursuant to this chapter.

(32) "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered.

(33) "Ineffective" means that pesticides such as bacteriostats, disinfectants, germicides, sanitizers, and like products fail to meet microbiological claims when tested in the laboratory utilizing the officially approved procedures of the Association of Official Analytical Chemists or other methods or procedures as the department may find necessary.

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

(35) "Ingredient statement" means a statement of the name and percentage by weight of each active ingredient, together with the total percentage of the inert ingredients in the pesticides.

(36) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six legs, usually in winged form (as, for example, beetles, bugs, bees, and flies) and to other allied classes and arthropods whose members are wingless and usually have more than six legs (as, for example, spiders, mites, ticks, centipedes, and wood lice).

(37) "Irrigation system" means any device or combination of devices having a hose, pipe, or other conduit which connects directly to any source of ground or surface water, through which device or combination of devices water or a mixture of water and chemicals is drawn and applied for agricultural purposes. The term does not include any handheld hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(38) "Label" means the written, printed, or graphic matter on or attached to a pesticide, device, or immediate and outside container or wrappers of such pesticide or device.

(39) "Labeling" means all labels and other written, printed, or graphic matter referencing the pesticide or device or upon any of its containers or wrappers, or accompanying the pesticide or device at any time, but does not include accurate, nonmisleading reference to current official publications of the United States Departments of Agriculture or Interior, the Environmental Protection Agency, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(40) "Land" means all land and water areas, including airspace.

(41) "Licensed applicator" means an individual who has reached the age of majority and is authorized by license from the department to use or supervise the use of any restricted-use pesticide covered by the license.

(42) "Manufacturer" means a person engaged in the business of importing, producing, preparing, mixing, formulating, or reformulating pesticides for the purpose of distribution.

(43) "Mixer-loader" means any individual who handles open containers or otherwise prepares, processes, or dilutes pesticides in preparation for final application.

(44) "Nematode" means invertebrate animals of the phylum Nematelminthes and class Nematoda (that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle and inhabiting soil, water, plants, or plant parts), and may also be known as nemas or eel worms.

(45) "Official sample" means any sample of a pesticide taken by the department in accordance with the provisions of this chapter or rules adopted under this chapter, and designated as official by the department.

(46) "Organotin compound" means any compound of tin used as a biocide in an antifouling paint.

(47) "Percent" means one one-hundredth part by weight or volume.

(48) "Pest" means:

- (a) Any insect, rodent, nematode, fungus, weed; or
- (b) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living humans or other living animals, which is declared to be a pest by the administrator of the United States Environmental Protection Agency or which may be declared to be a pest by the department by rule.

(49) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; however, the term 'pesticide' does not include any article that:

- (a) Is a 'new animal drug' within the meaning of s. 201(w) of the Federal Food, Drug, and Cosmetic Act;
- (b) Has been determined by the Secretary of the United States Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or
- (c) Is an animal feed within the meaning of s. 201(x) of the Federal Food, Drug, and

Cosmetic Act bearing or containing an article covered in this subsection.

(50) “Plant nutrient” means any ingredient that furnishes nourishment to the plant or promotes its growth in a normal manner.

(51) “Plant regulator” means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or maturation, or for otherwise altering the behavior, of ornamental or crop plants or the produce thereof; but does not include substances intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(52) “Private applicator” means an individual who has reached the age of majority and is licensed by the department to use or supervise the use of any restricted-use pesticide for purposes of producing any agricultural commodity on property owned or rented by his or her employer, or, if applied without compensation other than the trading of personal services between producers of agricultural commodities, on the property of another person.

(53) “Product” means a unique pesticide and label as distinguished by its individually assigned United States Environmental Protection Agency registration number, special local need registration number, or experimental use permit number.

(54) “Protect health and the environment” means protection against any unreasonable adverse effects on people or the environment.

(55) “Public applicator” means an individual who has reached the age of majority and is licensed by the department to use or supervise the use of restricted-use pesticides as an employee of a state agency, municipal corporation, or other governmental agency.

(56) “Product specific applicator” means an individual who has reached the age of majority and is licensed by the department to use or supervise the use of a particular restricted-use pesticide product that is identified on the license by the United States Environmental Protection Agency registration number, as well as any Florida special local need registration number and any specific identifying information as deemed appropriate for nonfederally registered products exempt under s. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, provided that the restricted-use pesticide product is used for the purpose of producing agricultural commodities on property owned or rented by the licensee or the licensee’s employer, or is applied on the property of another person without compensation other than trading of personal services between producers of agricultural commodities.

(57) “Registrant” means the person registering any pesticide pursuant to the provisions of this chapter.

(58) “Restricted-use pesticide” means a pesticide which, when applied in accordance with its directions for use, warnings, and cautions and for uses for which it is registered or for one or more such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, or injury to the applicator or other persons, and which has been classified as a restricted-use pesticide by the department or the administrator of the United States Environmental Protection Agency.

(59) "Sell or sale" includes exchanges.

(60) "Special local need registration" means a state registration issued by the department as authorized in s. 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(61) "Special review" is a process for reviewing selected pesticides based upon information that the pesticides have been found to present environmental or health concerns not considered in the registration process or that data submitted in support of registration are inadequate or outdated.

(62) "Tolerance" means the deviation from the guaranteed analysis permitted by law.

(63) "Transportation of pesticides in bulk" means the movement of a pesticide which is held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or 100 pounds net dry weight.

(64) "Under the direct supervision of a licensed applicator" means, unless otherwise prescribed by its labeling, a pesticide that must be applied by a competent person acting under the instruction and control of a licensed applicator who is available if and when needed, even though the licensed applicator is not physically present when the pesticide is applied.

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

(66) "Vessel" means any type of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

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

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 1, ch. 69-376; s. 1, ch. 70-52; s. 178, ch. 71-377; s. 1, ch. 73-63; s. 1, ch. 79-210; s. 1, ch. 82-106; s. 1, ch. 82-167; s. 15, ch. 84-338; s. 1, ch. 88-304; ss. 3, 37, ch. 92-115; s. 4, ch. 94-233; s. 474, ch. 97-103; s. 10, ch. 2000-154.

#### **487.025 Misbranding.**

(1) A pesticide or device is misbranded if its labeling bears any statement, design, or graphic representation which is false or misleading in any particular.

(2) A pesticide is misbranded if:

- (a) It is an imitation of, or is offered for sale under the name of, another pesticide.
- (b) Its labeling bears any reference to registration under this chapter.
- (c) The labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public.
- (d) The label does not contain a warning or caution statement which may be

necessary and, if complied with, adequate to prevent injury to living humans and other vertebrate animals.

- (e) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.
- (f) Any word, statement, or other information required by or under authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (g) It is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide as directed or in accordance with commonly recognized practice.
- (h) In the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to living humans or other vertebrate animals, or vegetation, to which it is applied, or to the person applying such pesticide. However, physical or physiological effects on plants or parts thereof shall not be deemed to be injury when this is the purpose for which the plant regulator, defoliant, or desiccant was applied in accordance with the label claims and recommendations.
- (i) Any ingredient which is present in amounts which are not likely to be effective when used according to directions is given undue prominence or conspicuousness, as compared with ingredients which are present in effective amounts, in its labeling. Such ingredient shall appear only in the ingredient statement.
- (j) It is found to be ineffective when tested in the laboratory.
- (k) It is found by the department to be of short measure.

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 1, ch. 73-63; s. 1, ch. 79-210; s. 1, ch. 82-106; s. 1, ch. 82-167; s. 15, ch. 84-338; ss. 3, 37, ch. 92-115; s. 5, ch. 94-233; s. 475, ch. 97-103; s. 11, ch. 2000-154.

Note.--Former s. 487.021(37)

**487.031 Prohibited acts.** It is unlawful:

(1) For any person to engage in the application of restricted-use pesticides, except as defined in chapters 388 and 482, without a certified applicator's license issued by the department unless such person is doing so under the direct supervision of a licensee. However, all aerial applicators applying any pesticide shall be licensed by the department in the appropriate category or categories, and provisions for direct supervision shall not be held to apply to aerial

applicators.

(2) To distribute, sell, or offer for sale within this state any pesticide or product which has not been registered pursuant to the provisions of this chapter, except pesticides distributed, sold, offered for sale, or used in accordance with the provisions of federal or state restriction, supervision, or cancellation orders or other existing stock agreements.

(3) To distribute, sell, offer for sale, or use within the state any pesticide which is adulterated or misbranded, or any device which is misbranded.

(4) To detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules promulgated under this chapter, or to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this chapter.

(5) For any person to use for his or her own advantage or to reveal any information relative to formulas of products acquired by authority of this chapter, other than to: the department, proper officials, or employees of the state; the courts of this state in response to a subpoena; physicians, pharmacists, and other qualified persons, in an emergency, for use in the preparation of antidotes. The information relative to formulas of products is confidential and exempt from the provisions of s. 119.07(1).

(6) To disseminate any false advertisement.

(7) For any person to dispose of a pesticide that has been placed under stop-sale, stop-use, removal, or hold order issued by the department without a written release order from the department or to remove stop-sale, stop-use, removal, or hold order from article so detained.

(8) To hold or offer for sale, sell, or distribute in this state restricted-use pesticides without a dealers license and unless the person to whom the sale is made holds a valid applicator's license to purchase and use such restricted-use pesticides or holds a valid purchase authorization card, in which case the use of the restricted-use pesticide shall be by a licensed applicator or an employee under his or her direct supervision.

(9) For any person to purchase any restricted-use pesticide unless the person is the holder of a valid dealers license, applicator's license, or purchase authorization card or to use a restricted-use pesticide unless the person is the holder of a valid applicator's license or unless he or she is using the restricted-use pesticide under the direct supervision of a licensed applicator.

(10) For any person to use any pesticide, including a restricted-use pesticide, or to dispose of any pesticide containers in a manner other than as stated in the labeling or on the label or as specified by the department or the United States Environmental Protection Agency. However, it shall not be unlawful to:

(a) Apply a pesticide at any dosage, concentration, or frequency less than that specified on the label or labeling, provided that the efficacy of the pesticide is maintained; further, provided that when a pesticide is applied by a commercial applicator, any deviation from label recommendations must be with the consent of the purchaser of the pesticide application services;

(b) Apply a pesticide against any target pest not specified in the labeling if the

application is to a crop, animal, or site specified on the label or labeling, provided that the label or labeling does not specifically prohibit the use on pests other than those listed on the label or labeling;

- (c) Employ any method of application not prohibited by the labeling;
- (d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the label or labeling; or
- (e) Use in a manner determined by rule not to be an unlawful act.

(11) For any person to handle, transport, store, display, or distribute pesticides in such a manner as to endanger human beings or the environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with such pesticides.

(12) For any person to dispose of, discard, or store any pesticides or pesticide containers in a manner which causes injury to humans, vegetation, crops, livestock, wildlife, or pollinating insects or to pollute any water supply or waterway.

(13) For any person to:

- (a) Make a false or fraudulent claim through any medium, misrepresenting the effect of materials or methods used;
- (b) Make a pesticide recommendation or application not in accordance with the label, except as provided in this section, or not in accordance with recommendations of the United States Environmental Protection Agency or not in accordance with the specifications of a special local need registration;
- (c) Operate faulty or unsafe equipment;
- (d) Operate in a faulty, careless, or negligent manner;
- (e) Apply any pesticide directly to, or in any manner cause any pesticide to drift onto, any person or area not intended to receive the pesticide;
- (f) Fail to disclose to an agricultural crop grower, prior to the time pesticides are applied to a crop, full information regarding the possible harmful effects to human beings or animals and the earliest safe time for workers or animals to reenter the treated field;
- (g) Refuse or, after notice, neglect to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the department;
- (h) Refuse or neglect to keep and maintain the records required by this chapter or to submit reports when and as required;
- (i) Make false or fraudulent records, invoices, or reports;
- (j) Use fraud or misrepresentation in making an application for a license or license

renewal;

- (k) Refuse or neglect to comply with any limitations or restrictions on or in a duly issued license;
- (l) Aid or abet a licensed or unlicensed person to evade the provisions of this chapter, or combine or conspire with a licensed or unlicensed person to evade the provisions of this chapter, or allow a license to be used by an unlicensed person;
- (m) Make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
- (n) Make false or misleading statements, or fail to report, pursuant to this chapter, any suspected or known damage to property or illness or injury to persons caused by the application of pesticides;
- (o) Impersonate any state, county, or city inspector or official;
- (p) Fail to maintain a current liability insurance policy or surety bond as provided for in this chapter;
- (q) Fail to adequately train, as provided for in this chapter, unlicensed applicators or mixer-loaders applying restricted-use pesticides under the direct supervision of a licensed applicator; or
- (r) Fail to provide authorized representatives of the department with records required by this chapter or with free access for inspection and sampling of any pesticide, areas treated with or impacted by these materials, and equipment used in their application.

History.--s. 1, ch. 65-457; s. 1, ch. 69-19; ss. 14, 35, ch. 69-106; s. 2, ch. 69-376; s. 2, ch. 70-52; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 1, ch. 72-166; ss. 2, 3, ch. 73-63; s. 9, ch. 74-247; s. 183, ch. 77-104; s. 412, ch. 77-147; s. 6, ch. 78-95; S. 1, ch. 78-154; s. 88, ch. 79-65; s. 137, ch. 79-164; s. 2, ch. 79-210; s. 2, ch. 81-318; ss. 8, 14, 15, ch. 82-167; s. 101, ch. 83-218; s. 3, ch. 86-116; s. 1, ch. 91-20; ss. 4, 37, ch. 92-115; s. 6, ch. 94-233; s. 322, ch. 96-406; s. 1122, ch. 97-103; s. 12, ch. 2000-154.

Note.--Subsection (13) former S. 487.158(1).

#### **487.041 Registration.**

(1) Every pesticide which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the department, and such registration shall be renewed annually. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

- (a) The name and street address of the registrant.

- (b) The name of the pesticide.
- (c) An ingredient statement and a complete copy of the labeling accompanying the pesticide which shall conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(2) For the purpose of defraying expenses of the department in connection with carrying out the provisions of this chapter, each person shall pay an annual registration fee of \$250 for each registered pesticide. The annual registration fee for each special local need label and experimental use permit shall be \$100. All registrations expire on December 31 of each year. Nothing in this section shall be construed as applying to distributors or retail dealers selling pesticides when such pesticides are registered by another person.

(3) The department shall adopt rules governing the procedures for pesticide registration and for the review of data submitted by an applicant for registration of a pesticide. The department shall determine whether a pesticide should be registered, registered with conditions, or tested under field conditions in this state. The department shall determine that all requests for pesticide registrations meet the requirements of current state and federal law. The department, whenever it deems it necessary in the administration of this chapter, may require the manufacturer or registrant to submit the complete formula, quantities shipped into or manufactured in the state for distribution and sale, evidence of the efficacy and the safety of any pesticide, and other relevant data. The department may review and evaluate a registered pesticide if new information is made available which indicates that use of the pesticide has caused an unreasonable adverse effect on public health or the environment. Such review shall be conducted upon the request of the secretary of the Department of Health in the event of an unreasonable adverse effect on public health or the secretary of the Department of Environmental Protection in the event of an unreasonable adverse effect on the environment. Such review may result in modifications, revocation, cancellation, or suspension of a pesticide registration. The department, for reasons of adulteration, misbranding, or other good cause, may refuse or revoke the registration of any pesticide, after notice to the applicant or registrant giving the reason for the decision. The applicant may then request a hearing, pursuant to chapter 120, on the intention of the department to refuse or revoke registration, and, upon his or her failure to do so, the refusal or revocation shall become final without further procedure. In no event shall registration of a pesticide be construed as a defense for the commission of any offense prohibited under this chapter.

(4) The department, in addition to its other duties under this section, has the power to:

- (a) Review data of the United States Environmental Protection Agency on any pesticide.
- (b) Formally request the United States Environmental Protection Agency to require registrants of pesticides to provide the department with environmental test data generated in this state or generated by simulating environmental conditions in this state.

- (c) Request information from the United States Environmental Protection Agency relating to the findings upon which that agency based its registration determinations for pesticides registered in this state.
- (d) Require a registrant who discontinues the distribution of a pesticide in this state to continue the registration of the pesticide until no more remains on retailer's shelves or 2 years after written notice to the department of date of discontinuance; provided such continued registration or sale is not specifically prohibited by the department or the United States Environmental Protection Agency.
- (e) Require data demonstrating the efficacy of pesticide products containing label statements that include directions for use as preventive treatments for termites for new construction. The department shall review the data and determine if the data supports label claims of termite prevention or protection from termite damage. Label claims for protection from damage must be supported by data that shows the product will prevent damage to a structure and its contents for a minimum of 5 years under Florida conditions. If the data does not support such label claims, then the product cannot be registered or reregistered. The department shall adopt rules specifying performance standards and acceptable test conditions for data submitted in support of an efficacy claim, or may reference such performance standards and test conditions established by the United States Environmental Protection Agency.

(5) Each application for a special local need registration must be supported by evidence of efficacy and safety which shall be submitted with the application for registration. This evidence, in whole or part, shall be examined by any other governmental agency designated by the department, which shall make recommendations to the department as to whether the application shall be accepted or rejected. The department may then issue an acceptance or rejection.

(6) The department shall provide summary information to the Pesticide Review Council regarding applications for registration of those pesticides for which data received in the registration process indicate that the pesticide, when used according to label instructions and precautions, may have a significant potential for adverse effects on human health or the environment. The council shall be kept apprised of the status of these applications while under review and of the final action by the Commissioner of Agriculture regarding the registration of these pesticides.

(7) In the discharge of duties under this section, the department shall seek the review and comment of other appropriate agencies. The procedures for obtaining review and comment shall be established through memoranda of understanding or cooperative agreements. Confidential data received by such governmental agencies from the department shall be confidential and exempt from the provisions of s. 119.07(1); and it is unlawful for any member of such agency or of the department to use the data for his or her own advantage or to reveal the data to the public.

(8) Nothing in this section affects the authority of the department to administer the pesticide registration program under this chapter or the authority of the Commissioner of Agriculture to

approve the registration of a pesticide.

(9) Pesticides used in accordance with provisions under federal or state restriction, suspension, or cancellation orders, or other existing stock agreements, are exempt from this section.

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 4, ch. 73-63; s. 2, ch. 78-154; s. 3, ch. 79-210; s. 16, ch. 84-338; s. 85, ch. 85-81; s. 1, ch. 85-172; s. 2, ch. 88-304; s. 2, ch. 91-20; ss. 5, 37, ch. 92-115; s. 7, ch. 94-233; s. 323, ch. 96-406; s. 1123, ch. 97-103; s. 13, ch. 2000-154; s. 13, ch. 2000-308; s. 9, ch. 2001-279; s. 25, ch. 2002-295.

**487.042 Restricted-use pesticides; designation.** The department may designate by rule a pesticide, or a pesticide applied under certain conditions or for a certain purpose, as a restricted-use pesticide” if the pesticide, when applied in accordance with its directions for use, warnings, and cautions, for uses for which it is registered or for one or more such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment or injury to the applicator or other persons.

History.--s. 3, ch. 69-376; ss. 14, 35, ch. 69-106; s. 3, ch. 78-154; ss. 2, 4, ch. 79-210; s. 3, ch. 88-304; ss. 6, 37, ch. 92-115.

**487.0435 License classification.** The department shall issue certified applicator licenses in the following classifications: certified public applicator; certified private applicator; and certified commercial applicator. In addition, separate classifications and subclassifications may be specified by the department in rule as deemed necessary to carry out the provisions of this chapter. Each classification shall be subject to requirements or testing procedures to be set forth by rule of the department and shall be restricted to the activities within the scope of the respective classification as established in statute or by rule. In specifying classifications, the department may consider, but is not limited to, the following:

- (1) Whether the license sought is for commercial, public, or private applicator status.
- (2) The method of applying the restricted-use pesticide.
- (3) The specific crops upon which restricted-use pesticides are applied.
- (4) The proximity of populated areas to the land upon which restricted-use pesticides are applied.
- (5) The acreage under the control of the licensee.
- (6) The pounds of technical restricted toxicant applied per acre per year by the licensee.

History.--ss. 7, 37, ch. 92-115; s. 8, ch. 94-233; s. 14, ch. 2000-154.

**487.0437 Direct infusion of chlorine gas.** The department shall create, within the commercial applicator classification, a category for the direct infusion of chlorine gas in residential swimming

pools by a portable system which dispenses chlorine gas registered with the United States Environmental Protection Agency and the Florida Department of Agriculture and Consumer Services for use as a disinfectant and algicide in residential swimming pools. It is the intention of the Legislature that the regulation of applicators doing chlorine gas infusion for treatment of algae in residential swimming pools as described herein is preempted to the department and not the Department of Business and Professional Regulation under chapter 489.

History.--ss. 9, 37, ch. 92-115; s. 183, ch. 94-218.

#### **487.044 Certification; examination.**

(1) The department may independently, or through the Institute of Food and Agricultural Sciences, develop a certification program, including an optional training session of at least 4 hours, designed to ensure the competency of those persons to whom the department issues licenses. A standard core examination shall be developed which shall be administered to all applicants for licensure.

(2) The department shall require each applicant for a certified applicator's license to demonstrate competence by a written or oral examination in which the applicant must demonstrate adequate knowledge concerning the proper use and application of restricted-use pesticides in each classification for which application for license is made. The examination may be prepared, administered, and evaluated by the department. Each applicant for a certified applicator's license shall demonstrate minimum competence as to:

- (a) The proper use of the equipment.
- (b) The environmental hazards that may be involved in applying restricted-use pesticides.
- (c) Calculating the concentration of restricted-use pesticides to be used in particular circumstances.
- (d) Identification of common pests to be controlled and the damages caused by such pests.
- (e) Protective clothing and respiratory equipment required during the handling and application of restricted-use pesticides.
- (f) General precautions to be followed in the disposal of containers, as well as the cleaning and decontamination of the equipment which the applicant proposes to use.
- (g) Applicable state and federal pesticide laws, rules, and regulations.
- (h) General safety precautions.

History.--ss. 8, 37, ch. 92-115.

#### **487.045 Fees.**

(1) The department shall establish applicable fees by rule. The fees shall not exceed \$250 for commercial applicators or \$100 for private applicators and public applicators, for initial licensing and for each subsequent license renewal. The fees shall be determined annually and shall represent department costs associated with enforcement of the provisions of this chapter.

(2) Fees collected under the provisions of this chapter shall be deposited into the General Inspection Trust Fund and shall be used to defray expenses in the administration of this chapter.

History.--ss. 11, 37, ch. 92-115; s. 9, ch. 94-233; s. 15, ch. 2000-154.

#### **487.046 Application; Licensure.**

(1) Application for license shall be made in writing to the department on a form furnished by the department. Each application shall contain information regarding the applicant's qualifications, proposed operations, and license classification or subclassifications, as prescribed by rule.

(2) If the department finds the applicant qualified in the classification for which the applicant has applied, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Department of Transportation of this state to operate the equipment described in the application and has shown proof of liability insurance or posted a surety bond in an amount to be set forth by rule of the department, the department shall issue a certified applicators license, limited to the classifications for which the applicant is qualified. The license shall expire as required by rules promulgated under this chapter, unless it has been revoked or suspended by the department prior to expiration, for cause as provided in this chapter. The license or authorization card issued by the department verifying licensure shall be kept on the person of the licensee while performing work as a licensed applicator.

History.--ss. 12, 37, ch. 92-115; s. 10, ch. 94-233; s. 16, ch. 2000-154.

#### **487.047 Nonresident license; reciprocal agreement; authorized purchase.**

(1) The department may waive all or part of the examination requirements provided for in this chapter on a reciprocal basis with any other state or agency, or an Indian tribe, that has substantially the same or better standards.

(2) Any nonresident applying for a license under this chapter to operate in the state shall file a Designation of Registered Agent naming the Secretary of State as the agent of the nonresident, upon whom process may be served in the event of any suit against the nonresident. The designation shall be prepared on a form provided by the department and shall render effective the jurisdiction of the courts of this state over the nonresident applicant. However, any nonresident who has a duly appointed registered agent upon whom process may be served as provided by law shall not be required to designate the Secretary of State as registered agent. The Secretary of State shall be allowed the registered-agent fees as provided by law for designating registered agents. The department shall be furnished with a copy of the designation of the Secretary of State or of a registered agent which is certified by the Secretary of State.

The Secretary of State shall notify the department of any service of process it receives as registered agent for persons licensed under this chapter.

(3) Restricted-use pesticides may be purchased by any person who holds a valid applicator's license or who holds a valid purchase authorization card issued by the department or by a licensee under chapter 482 or chapter 388. A nonlicensed person may apply restricted-use pesticides under the direct supervision of a licensed applicator. An applicator's license shall be issued by the department on a form supplied by it in accordance with the requirements of this chapter.

History.--ss. 13, 37, ch. 92-115; s. 11, ch. 94-233; s. 17, ch. 2000-154.

#### **487.048 Dealers license; records.**

(1) Each person holding or offering for sale, selling, or distributing restricted-use pesticides shall obtain a dealer's license from the department. Application for the license shall be made on a form prescribed by the department. The license must be obtained before entering into business or transferring ownership of a business. The department may require examination or other proof of competency of individuals to whom licenses are issued or of individuals employed by persons to whom licenses are issued. Demonstration of continued competency may be required for license renewal, as set by rule. The license shall be renewed annually as provided by rule. An annual license fee not exceeding \$250 shall be established by rule. However, a user of a restricted-use pesticide may distribute unopened containers of a properly labeled pesticide to another user who is legally entitled to use that restricted-use pesticide without obtaining a pesticide dealer's license. The exclusive purpose of distribution of the restricted-use pesticide is to keep it from becoming a hazardous waste as defined in s. 403.703(21).

(2) A record of each sale of a restricted-use pesticide shall be maintained by the licensed dealer for a period of 2 years and shall be made available to the department upon request. The content of the record shall be established by department rule.

History.--ss. 14, 37, ch. 92-115; s. 18, ch. 2000-154.

#### **487.049 Renewal; late fee; recertification.**

(1) The department shall require renewal of a certified applicators license at 4-year intervals from the date of issuance. If the application for renewal of any license provided for in this chapter is not filed on time, a late fee shall be assessed not to exceed \$50. However, the penalty shall not apply if the renewal application is filed within 60 days after the renewal date, provided the applicant furnishes an affidavit certifying that he or she has not engaged in business subsequent to the expiration of the license for a period not exceeding 60 days. A license may be renewed without taking another examination unless the department determines that new knowledge related to the classification for which the applicant has applied makes a new examination necessary; however, the department may require the applicant to provide evidence of continued competency, as determined by rule. If the license is not renewed within 60 days of the expiration date, then the licensee may again be required to take another examination, unless there is some unavoidable circumstance which results in the delay of the renewal of any license issued under this chapter which was not under the applicant's control.

(2) The department shall require all certified applicators to provide evidence of continued competency through the implementation of a recertification program set forth by rule. Recertification options shall include at least one of the following: the attendance of training sessions with either a written or oral examination; or accumulation of a minimum number of recertification credits through attendance of approved continuing education classes or seminars. If the licensee fails to renew the license within 60 days of the expiration date, reexamination shall be required.

History.--s. 8, ch. 74-247; S. 12, ch. 79-210; S. 2, ch. 81-318; ss. 7, 14, 15, ch. 82-167; s. 1, ch. 86-72; ss. 15, 37, ch. 92-115; s. 12, ch. 94-233; s. 476, ch. 97-103; s. 19, ch. 2000-154.  
Note.--Former s. 487.157.

#### **487.051 Administration; rules; procedure.**

(1) The department may by rule:

- (a) Declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances.
- (b) Establish procedures for the taking and handling of samples and establish tolerances and deficiencies where not specifically provided for in this chapter; assess penalties; and prohibit the sale or use of pesticides or devices shown to be detrimental to human beings, the environment, or agriculture or to be otherwise of questionable value.
- (c) Determine whether pesticides, and quantities of substances contained in pesticides, are injurious to the environment. The department shall be guided by the United States Environmental Protection Agency regulations in this determination.
- (d) Establish requirements governing aircraft used for the aerial application of pesticides, including requirements for recordkeeping, annual aircraft registration, secure storage when not in use, area-of-application information, and reporting any sale, lease, purchase, rental, or transfer of such aircraft to another person.
- (e) Establish requirements governing the secure storage of pesticides used by aerial pesticide applicators.

(2) The department is authorized to adopt by rule the primary standards established by the United States Environmental Protection Agency with respect to pesticides. If the provisions of this chapter are preempted in part by federal law, those provisions not preempted shall apply. This chapter is intended as comprehensive and exclusive regulation of pesticides in this state. Except as provided in chapters 373, 376, 388, 403, and 482, or as otherwise provided by law, no agency, commission, department, county, municipality, or other political subdivision of the state may adopt laws, regulations, rules, or policies pertaining to pesticides, including their registration, packaging, labeling, distribution, sale, or use, except that local jurisdictions may adopt or enforce

an ordinance pertaining to pesticides if that ordinance is in the area of occupational license taxes, building and zoning regulations, disposal or spillage of pesticides within a water well

zone, or pesticide safety regulations relating to containment at the storage site.

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 179, ch. 71-377; ss. 5, 6, ch. 73-63; s. 6, ch. 78-95; s. 2, ch. 82-106; ss. 16, 37, ch. 92-115; s. 13, ch. 94-233; s. 477, ch. 97-103; s. 20, ch. 2000-154; s. 1, ch. 2001-360.

#### **487.0615 Pesticide Review Council.**

(1)(a) There is created within the department the Pesticide Review Council. The purpose of the council is to advise the Commissioner of Agriculture regarding the sale, use, and registration of pesticides and to advise government agencies, including the State University System, with respect to those activities related to their responsibilities regarding pesticides. The council shall serve as the statewide forum for the coordination of pesticide-related activities to eliminate duplication of effort and maximize protection of the environment of the state and the health of the public.

(b) The council shall consist of 11 scientific members as follows: a scientific representative from the Department of Agriculture and Consumer Services, a scientific representative from the Department of Environmental Protection, a scientific representative from the Department of Health, and a scientific representative from the Fish and Wildlife Conservation Commission, each to be appointed by the respective agency; the, dean of research of the Institute of Food and Agricultural Sciences of the University of Florida; and six members to be appointed by the Governor. The six members to be appointed by the Governor must be a pesticide industry representative, a representative of an environmental group, a hydrologist, a toxicologist, a scientific representative from one of the five water management districts rotated among the five districts, and a grower representative from a list of three persons nominated by the statewide grower associations. Each member shall be appointed for a term of 4 years and shall serve until a successor is appointed. A vacancy shall be filled for the remainder of the unexpired term.

(c) In conducting its meetings, the council shall use accepted rules of procedure. A majority of the members of the council constitutes a quorum for all purposes, and an act by a majority of such quorum at any meeting constitutes an official act of the council. The secretary shall keep a complete record of each meeting which must show the names of members present and the actions taken. These records must be kept on file with the department, and these records and other documents about matters within the jurisdiction of the council are subject to inspection by members of the council.

(d) The members of the council shall meet and organize by electing a chair, a vice chair, and a secretary whose terms shall be for 1 year each. Council officers may not serve consecutive terms.

(e) The council shall meet at the call of its chair, at the request of a majority of its members, at the request of the department, or at such time as a public health or environmental emergency arises.

(2) The council shall have the power and duty to:

- (a) Recommend, based upon review of state pesticide program needs, appropriate scientific studies on any registered pesticide when substantive preliminary data indicate that the pesticide could pose an unreasonably adverse effect on the

environment or human health. The recommendations may include using available services of state agencies or of the State University System to conduct such scientific studies or may recommend that these agencies seek funding for this purpose. When the council recommends a study, it must support legislative budget requests for funding needed to conduct the study. The council may also conduct scientific studies if specific funding is provided to the department or other governmental agency by the Legislature.

- (b) Make recommendations, subject to a majority vote, directly to the Commissioner of Agriculture for actions to be taken with respect to the sale or use of a pesticide which the council has reviewed. When such review is performed in conjunction with the registration of a pesticide, the council shall comply with the time framework of the registration process pursuant to chapter 120 and as implemented by department rules.
- (c) Provide advice or information to appropriate governmental agencies, including the State University System, with respect to those activities related to their responsibilities regarding pesticides. However, confidential data received from the United States Environmental Protection Agency or the registrant shall be confidential and exempt from the provisions of s. 119.07(1); and it is unlawful for any member of the council to use the data for his or her own advantage or to reveal the data to the general public.
- (d) Review biological and alternate controls to replace or reduce the use of pesticides.
- (e) Consider, at the request of any member, the development of appropriate advice or recommendations on a pesticide when substantive preliminary data indicate that the pesticide could pose an unreasonably adverse effect on the environment or human health.
- (f) Assist the department in the review of registered pesticides which are selected for special review based upon potential environmental or human health effects. The department shall consult with the council in the special review process. This process must include, but need not be limited to, selecting pesticides for special review, providing periodic updates to the council on preliminary findings as a special review progresses, and formulating final recommendations on any pesticide on which a special review has been conducted.

(3) The council shall submit an annual report, no later than November 1 of each year, to the Commissioner of Agriculture, the Speaker of the House of Representatives, and the President of the Senate, containing a record of the council's activities, recommendations regarding any pesticide reviewed by the council, and recommendations related to any other duty of the council and its purpose.

(4) The council is defined as a "substantially interested person" and has standing under chapter 120 in any proceeding conducted by the department relating to the registration of a pesticide under this chapter. The standing of the council shall in no way prevent individual members of the council from exercising standing in these matters.

(5) Members of the council shall receive no compensation for their services, but are entitled to be reimbursed for per diem and travel expenses as provided in s. 112.061.

History.--ss. 9, 11, ch. 83-310; s. 18, ch. 84-338; s. 1, ch. 86-116; ss. 4, 6, 7, ch. 88-304; s. 3, ch. 91-20; s. 5, ch. 91-429; ss. 17, 37, 38, ch. 92-115; s. 14, ch. 94-233; s. 14, ch. 94-356; s. 324, ch. 96-406; s. 1124, ch. 97-103; s. 232, ch. 99-8; s. 222, ch. 99-245; s. 21, ch. 2000-154.

#### **487.064 Antisiphon requirements for irrigation systems.**

(1) Any irrigation system used for the application of pesticides must be equipped with an antisiphon device adequate to protect against contamination of the water supply. The requirements of this section shall also apply to water supply lines to pesticide mixing-loading equipment other than those systems which incorporate a physical gap between the water source and the application equipment.

(2) It is unlawful for any person to apply chemicals through an irrigation system which is not equipped with an antisiphon device as required by this section, or to mix and load pesticides for application unless there is a physical gap or its equivalent between the line from the water source and the application equipment.

(3) The department may establish by rule specific requirements for antisiphon devices and for sites where pesticide mixing-loading occurs.

(4) Any governmental agency which requires antisiphon devices on irrigation systems used for the application of chemicals shall use the specific antisiphon device requirements adopted by the department.

History.--s. 17, ch. 84-338; ss. 18, 37, ch. 92-115.

#### **487.071 Enforcement, inspection, sampling, and analysis.**

(1) The department is authorized to enter upon any public or private premises or carrier where pesticides are known or thought to be distributed, sold, offered for sale, held, stored, or applied, during regular business hours in the performance of its duties relating to pesticides and records pertaining to pesticides. No person shall deny or refuse access to the department when it seeks to enter upon any public or private premises or carrier during business hours in performance of its duties under this chapter.

(2) The department is authorized and directed to sample, test, inspect, and make analyses of pesticides sold, offered for sale, distributed, or used within this state, at a time and place and to such an extent as it may deem necessary, to determine whether the pesticides or persons exercising control over the pesticides are in compliance with the provisions of this chapter, the rules adopted under this chapter, and the provisions of the pesticide label or labeling.

(3) The official analysis shall be made from the official sample. A sealed and identified sample, herein called "official check sample" shall be kept until the analysis on the official sample is completed. However, the registrant may obtain upon request a portion of the official sample. Upon completion of the analysis of the official sample, a true copy of the certificate of analysis shall be mailed to the registrant of the pesticide from whom the official sample was taken and also to the dealer or agent, if any, and consumer, if known. If the official analysis conforms with

the provisions of this chapter, the official check sample may be destroyed. If the official analysis does not conform with the provisions of this chapter, the rules adopted under this chapter, and the provisions of the pesticide label or labeling, the official check sample shall be retained for a period of 90 days from the date of the certificate of analysis of the official sample. If within that time the registrant of the pesticide from whom the official sample was taken makes demand for analysis by a referee chemist, a portion of the official check sample sufficient for analysis shall be sent to a referee chemist who is mutually acceptable to the department and the registrant for analysis at the expense of the registrant. Upon completion of the analysis, the referee chemist shall forward to the department and to the registrant a certificate of analysis bearing a proper identification mark or number; and such certificate of analysis shall be verified by an affidavit of the person or laboratory making the analysis. If the certificate of analysis checks within 3 percent of the department's analysis on each active ingredient for which analysis was made, the mean average of the two analyses shall be accepted as final and binding on all concerned. However, if the referees certificate of analysis shows a variation of greater than 3 percent from the departments analysis in any one or more of the active ingredients for which an analysis was made, upon demand of either the department or the registrant from whom the official sample was taken, a portion of the official check sample sufficient for analysis shall be submitted to a second referee chemist who is mutually acceptable to the department and the registrant, at the expense of the party or parties requesting the referee analysis. Upon completion of the analysis, the second referee chemist shall make a certificate and report as provided in this subsection for the first referee chemist. The mean average of the two analyses nearest in conformity shall be accepted as final and binding on all concerned. If no demand is made for an analysis by a second referee chemist, the department's certificate of analysis shall be accepted as final and binding on all concerned.

(4) If a pesticide or device fails to comply with the provisions of this chapter with reference to the ingredient statement reflecting the composition of the product, as required on the registration and labeling, and the department contemplates possible criminal proceedings against the person responsible because of this violation, the department shall, after due notice, accord the person an informal hearing or an opportunity to present evidence and opinions, either orally or in writing, with regard to such contemplated proceedings. If in the opinion of the department the facts warrant, the department may refer the facts to the state attorney for the county in which the violation occurred, with a copy of the results of the analysis or the examination of such article; provided that nothing in this chapter shall be construed as requiring the department to report for prosecution minor violations whenever it believes that the public interest will be subserved by a suitable notice of warning in writing.

(5) It shall be the duty of each state attorney to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(6) The department shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under the authority of this chapter.

(7)(a) The department may analyze pesticide samples upon request in a manner consistent with this chapter.

(b) The department shall establish by rule a fee schedule for pesticide samples analyzed upon request. The fees shall be sufficient to cover the costs to the department for taking the samples

and performing the analysis. However, no fee shall exceed \$400 per test.

(c) The department shall keep separate records with respect to requested pesticide analyses, including the pesticide analyzed, tests performed, fees collected, the name and address of the person who requested the analysis, and the name and address of the registrant.

(d) All fees collected pursuant to this subsection shall be deposited into the General Inspection Trust Fund and shall be used by the department to implement this subsection.

(e) In addition to any other penalty provided by this chapter, the registrant of any pesticide found to be adulterated, misbranded, or otherwise deficient shall reimburse the person requesting the pesticide analysis under this subsection for all fees assessed by and paid to the department.

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 26, ch. 73-334; s. 5, ch. 79-210; s. 3, ch. 82-106; s. 19, ch. 84-338; ss. 19, 37, ch. 92-115; S. 15, ch. 94-233; s. 22, ch. 2000-154.

#### **487.081 Exemptions.**

(1) The penalties provided for violations of s. 487.031(2) shall not apply to:

- (a) Any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier, upon request, permits the department or its designated agent to copy all records showing the transactions in and movement of the articles;
- (b) Public officials of this state and the Federal Government engaged in the performance of their official duties;
- (c) The manufacturer or shipper of a pesticide intended for experimental use, if the use is conducted by or under the supervision of a state or federal agency authorized to conduct pesticide research or by a person who has obtained a permit in accordance with department rules prior to shipment.

(2) No article shall be deemed in violation of this chapter when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser.

(3) Notwithstanding any other provision of this chapter, registration required under this chapter is not required in the case of a pesticide stored or shipped from one manufacturing plant within this state to another manufacturing plant within this state operated by the same person.

(4) Nothing in this chapter shall be construed to apply to persons duly licensed or certified under chapter 388 or chapter 482 performing any pest control or other operation for which they are licensed or certified under those chapters.

(5) The agricultural employer may provide coveralls, chemical-resistant gloves, and chemical-resistant footwear, instead of the personal protective equipment specified on the label, for any worker doing irrigation work for which the only contact with treated surfaces is to the feet, lower legs, hands, and arms.

(6) The Department of Environmental Protection is not authorized to institute proceedings against any property owner or leaseholder of property under the provisions of s. 376.307(5) to recover any costs or damages associated with pesticide contamination of soil or water, or the evaluation, assessment, or remediation of pesticide contamination of soil or water, including sampling, analysis, and restoration of soil or potable water supplies, subject to the following conditions:

- (a) The pesticide contamination of soil or water is determined to be the result of the use of pesticides by the property owner or leaseholder, in accordance with state and federal law, applicable registered labels, and rules on property classified as agricultural land pursuant to s. 193 .46 1;
- (b) The property owner or leaseholder maintains records of such pesticide applications and such records are provided to the department upon request;
- (c) In the event of pesticide contamination of soil or water, the department, upon request, shall make such records available to the Department of Environmental Protection;
- (d) This subsection does not limit regulatory authority under a federally delegated or approved program; and
- (e) This subsection is remedial in nature and shall apply retroactively.

The department, in consultation with the secretary of the Department of Environmental Protection, may adopt rules prescribing the format, content, and retention time for records to be maintained under this subsection.

History.--s. 1, ch. 65-457; s. 4, ch. 65-295; ss. 14, 35, ch. 69-106; s. 6, ch. 79-210; s. 2, ch. 86-116; ss. 20, 37, ch. 92-115; s. 16, ch. 94-233; s. 23, ch. 2000-154; s. 14, ch. 2000-308.

#### **487.091 Tolerances, deficiencies, and penalties.**

(1) No deficiency will exist in connection with the analysis or report on the analysis of any sample of a pesticide unless the deficiency is greater than 3 percent of the amount guaranteed of one or more of the active ingredients or added ingredients claimed, except as provided by the department by rule.

(2) If a pesticide is found by analysis to be deficient in an active ingredient beyond the tolerance as provided in this chapter, the registrant is subject to a penalty for the deficiency, not to exceed \$10,000 per violation. However, no penalty shall be assessed when the official sample was taken from a pesticide that was in the possession of a consumer for more than 45 days from the date of purchase by that consumer, or when the product label specifies that the product should be used by an expiration date that has passed. Procedures for assessing penalties shall be established by rule, based on the degree of the deficiency. Penalties assessed shall be paid to the consumer or, in the absence of a known consumer, the department. If the penalty is not paid within the prescribed period of time as established by rule, the department may deny, suspend, or revoke the registration of any pesticide.

(3) If a pesticide is found to be ineffective, it shall be deemed to be misbranded and subject to a penalty as established by rule, not to exceed \$10,000 per violation.

(4) If a pesticide is found by the department to be of short measure while in the possession of the consumer, the registrant shall make payment in full to the consumer in an amount consistent with procedures to be established by rule.

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 439, ch. 71-136; s. 4, ch. 82-106; s. 100, ch. 83-218; s. 20, ch. 84-338; s. 5, ch. 90-65; ss. 21, 37, ch. 92-115; s. 17, ch. 94-233; s. 24, ch. 2000-154.

#### **487.101 Stop-sale, stop-use, removal, or hold orders.**

(1) When a pesticide or device is being offered or exposed for sale, used, or held in violation of any of the provisions of this chapter, the department may issue and enforce a stop-sale, stop-use, removal, or hold order, in writing, to the owner or custodian of the pesticide or device, ordering that the pesticide or device be held at a designated place until the chapter has been complied with and the pesticide or device is released, in writing~ by the department or the violation has been disposed of by court order.

(2) The written notice is warning to all persons, including, but not limited to, the owner or custodian of the pesticide or the owner's or custodian's agents or employees, to scrupulously refrain from moving, bothering, altering, or interfering with the pesticide or device or from altering, defacing, or in any way interfering with the written notice or permitting the same to be done. The willful violation of these provisions is a misdemeanor, subjecting the violator to the penalty provisions of this chapter.

(3) The department shall release the pesticide or device under a stop-sale, stop-use, removal, or hold order when the owner or custodian complies with the provisions of this chapter.

(4) The owner or custodian, with authorization and supervision of the department, may relabel the pesticide or device so that the label will conform to the product, or transfer and return the product to the manufacturer or supplier for the purpose of bringing the product in compliance with the provisions of this chapter.

History.--s. 1, ch. 65-457; s. 1, ch. 67-527; s. 1, ch. 69-12; ss. 14, 35, ch. 69-106; S. 440, ch. 71-136; s. 7, ch. 73-63; s. 7, ch. 79-210; s. 1, ch. 90-65; ss. 22, 37, ch. 92-115; s. 18, ch. 94-233; s. 25, ch. 2000-154.

#### **487.111 Seizure, condemnation, and sale.**

(1) Any lot of pesticide or device not in compliance with the provisions of this chapter is subject to seizure on complaint of the department to the circuit court in the county in which the pesticide or device is located. In the event the court finds the pesticide or device in violation of this chapter and orders it condemned, it shall be disposed of as the court may direct; provided that in no instance shall the disposition of the pesticide or device be ordered by the court without first giving the owner or custodian an opportunity to apply to the court for release of the pesticide or device or for permission to process or relabel it to bring it into compliance with this chapter.

(2) If the court finds that a condemned pesticide or device may be disposed of by sale, the proceeds, less legal costs, shall be paid to the General Inspection Trust Fund.

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

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 8, ch. 73-63; ss. 23, 37, ch. 92-115; s. 19, ch. 94-233; s. 26, ch. 2000-154.

**487.13 Cooperation.** The department is authorized and empowered to cooperate with and enter into agreements with any other agency of this state, the United States Department of Agriculture, the United States Environmental Protection Agency, and any other state or federal agency for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; s. 10, ch. 73-63; ss. 24, 37, ch. 92-115; s. 20, ch. 94-233; s. 27, ch. 2000-154.

**487.15 Reclamation, reimbursement, and disposal.**

(1) When the use of any pesticide registered or otherwise approved for use in this state is suspended or canceled to prevent harm to the public or the environment, the registrant, at its own expense, shall reclaim and provide reimbursement for that pesticide from any distributor, dealer, user, or other party possessing it in this state and provide for the proper removal or disposal of the pesticide in accordance with federal and state law.

(2) The registrant shall comply with the requirements of subsection (1) within 90 days of issuance of the order of suspension or cancellation.

History.--s. 22, ch. 84-338; ss. 25, 37, ch. 92-115.

**487.156 Governmental agencies.** All governmental agencies shall be subject to the provisions of this chapter and rules adopted under this chapter. Public applicators using or supervising the use of restricted-use pesticides shall be subject to examination as provided in s. 487.044.

History.--s. 7, ch. 74-247; s. 11, ch. 79-210; s. 2, ch. 81-318; ss. 6, 14, 15, ch. 82-167; ss. 26, 37, ch. 92-115; s. 21, ch. 94-233; s. 28, ch. 2000-154.

**487.1585 Duties of licensee with respect to unlicensed applicators and mixer-loaders and field workers.**

(1) Each licensed applicator shall provide to each unlicensed applicator or mixer-loader working under his or her direct supervision adequate instruction and training so that the applicator or mixer-loader understands the safety procedures required for the pesticides that will be used. The applicator or mixer-loader shall be given this training before handling restricted-use pesticides. This training shall be set forth by the department by rule and shall include, but not be limited to, the safety procedures to be followed as specified on the label; the safety clothing and equipment to be worn; the common symptoms of pesticide poisoning; the dangers of eating,

drinking, or smoking while handling pesticides; and where to obtain emergency medical treatment. No licensee shall be permitted to provide direct supervision to more than 15 unlicensed applicators or mixer-loaders at any given time.

(2) Prior to the entry of workers into a field, it shall be the responsibility of the licensed applicator to assure that the workers' direct supervisor provides an oral statement to the workers, in language understood by the workers, of the warning contained on the pesticide label with respect to any pesticides that have been used within a 48-hour period.

History.--ss. 5, 15, ch. 82-167; ss. 27, 37, ch. 92-115; s. 478, ch. 97-103.

**487.159 Damage or injury to property, animal, or person; mandatory report of damage or injury; time for filing; failure to file.**

(1) The person claiming damage or injury to property, animal, or human beings from application of a pesticide shall file with the department a written statement claiming damages, on a form prescribed by the department, within 48 hours after the damage or injury becomes apparent. The statement shall contain, but shall not be limited to, the name of the person responsible for the application of the pesticide, the name of the owner or lessee of the land on which the crop is grown and for which the damages are claimed, and the date on which it is alleged that the damages occurred. The department shall investigate the alleged damages and notify all concerned parties of its findings. If the findings reveal a violation of the provisions of this chapter, the department shall determine an appropriate penalty, as provided in this chapter. The filing of a statement or the failure to file such a statement need not be alleged in any complaint which might be filed in a court of law, and the failure to file the statement shall not be considered any bar to the maintenance of any criminal or civil action.

(2) It is the duty of any licensee to report unreasonable adverse effects on the environment or damage to property or injury to a person as the result of the application of a restricted-use pesticide by the licensee or by an applicator or mixer-loader under the licensee's direct supervision, if and when the licensee has knowledge of such damage or injury. It is also the express intent of this section to require all physicians to report all pesticide-related illnesses or injuries to the nearest county health department, which will notify the department so that the department may establish a pesticide incident monitoring system within the Division of Agricultural Environmental Services.

(3) When damage to human beings, animals, plants, or other property is alleged to have been done, the claimant shall permit the licensee and the licensee's representatives to observe within reasonable hours the alleged damage in order that the damage may be examined. The failure of the claimant to permit observation and examination of the alleged damage shall automatically bar the claim against the licensee.

History.--s. 10, ch. 74-247; s. 6, ch. 78-95; s. 2, ch. 81-318; ss. 9,14, 15, ch. 82-167; S. 2, ch. 84-165; s. 3, ch. 90-65; ss. 28, 37, ch. 92-115; s. 4, ch. 92-291; s. 22, ch. 94-233; s. 29, ch. 2000-154.

**487.160 Records; report.** Licensed private applicators supervising 15 or more unlicensed applicators or mixer-loaders and licensed public applicators and licensed commercial applicators shall maintain records as the department may determine by rule with respect to the application of restricted pesticides, including, but not limited to, the type and quantity of

pesticide, method of application, crop treated, and dates and location of application. Other licensed private applicators shall maintain records as the department may determine by rule with respect to the date, type, and quantity of restricted-use pesticides used. Licensees shall keep records for a period of 2 years from date of the application of the pesticide to which the records refer, and shall furnish to the department a copy of the records upon written request by the department. Every third year, the department shall conduct a survey and compile a report on restricted-use pesticides in this state. This report shall include, but not be limited to, types and quantities of pesticides, methods of application, crops treated, and dates and locations of application; records of persons working under direct supervision; and reports of misuse, damage, or injury.

History.--s. 11, ch. 74-247; s. 4, ch. 78-154; s. 2, ch. 81-318; ss. 10, 14, 15, ch. 82-167; s. 4, ch. 91-20; ss. 29, 37, ch. 92-115; s. 325, ch. 96-406.

#### **487.161 Exemptions, nonagricultural pest control and research.**

(1) Any person duly licensed or certified under chapter 482, or under the supervision of chapter 388, is exempted from the licensing provisions of this chapter.

(2) The use of the antibiotic oxytetracycline hydrochloride for the purpose of controlling lethal yellowing is exempted from the licensing provisions of this chapter.

(3) The personnel of governmental, university, or industrial research agencies are exempted from the provisions of this chapter when doing applied research within a laboratory, but shall comply with all the provisions of this chapter when applying restricted-use pesticides to experimental or demonstration plots.

History.--s. 12, ch. 74-247; s. 6, ch. 75-178; s. 1, ch. 77-174; s. 14, ch. 79-210; s. 2, ch. 81-318; ss. 14, 15, ch. 82-167; ss. 30, 37, ch. 92-115; s. 23, ch. 94-233; S. 30, ch. 2000-154.

#### **487.163 Information; interagency cooperation.**

(1) The department may, in cooperation with the University of Florida or other agencies of government, publish information and conduct short courses of instruction in the safe use and application of pesticides for the purpose of carrying out the provisions of this chapter.

(2) The department may cooperate or enter into formal agreements with any other agency or educational institution of this state or its subdivisions or with any agency of any other state or of the Federal Government for the purpose of carrying out the provisions of this chapter and of securing uniformity of regulations.

History.--ss. 14, 15, ch. 74-247; s. 2, ch. 81-318; ss. 14, 15, ch. 82-167; ss. 31, 37, ch. 92-115; s. 24, ch. 94-233; s. 31, ch. 2000-154.

#### **487.171 Classification of antifouling paint containing organotin compounds as restricted-use pesticides; prohibition of distribution and sale.**

(1) The department shall classify antifouling paints containing organotin compounds having an acceptable release rate as restricted-use pesticides subject to the requirements of this chapter.

Antifouling paints containing organotin having acceptable release rates and sold in spray cans of 16 ounces avoirdupois weight or less for outboard motor or lower unit use are exempt from the restricted-use pesticide classification requirement.

(2) The department shall initiate action under chapter 120, to deny or cancel the registration of antifouling paints containing organotin compounds which do not have an acceptable release rate or do not meet other criteria established by the department in accordance with this chapter.

(3) Distribution, sale, and use of antifouling paints containing organotin compounds with acceptable release rates shall be limited to dealers and applicators licensed by the department in accordance with this chapter, to distribute, sell, or use restricted-use pesticides. Such paint may be applied only by licensed applicators and may be applied only to vessels which exceed 25 meters in length or which have aluminum hulls.

(4) A person other than a paint manufacturer may not sell or deliver to, or purchase or receive from, another person at retail or wholesale any substance containing tin compounds for the purpose of adding such substance to paint to create an antifouling paint.

History.--s. 2, ch. 88-194; s. 1, ch. 89-296; ss. 32, 37, ch. 92-115; s. 25, ch. 94-233; s. 32, ch. 2000- 154.

**487.172 Educational program.** The department shall develop a program to educate and inform antifouling paint applicators, vessel owners, and interstate and intrastate paint manufacturers and distributors in the state as to the characteristics and hazards associated with organotin compounds in antifouling paints and of state laws restricting their use.

History.--s. 3, ch. 88-194; s. 1, ch. 89-296; ss. 33, 37, ch. 92-115.

**487.175 Penalties; administrative fine; injunction.**

(1) In addition to any other penalty provided in this chapter, when the department finds any person, applicant, or licensee has violated any provision of this chapter or rule adopted under this chapter, it may enter an order imposing any one or more of the following penalties:

- (a) Denial of an application for licensure.
- (b) Revocation or suspension of a license.
- (c) Issuance of a warning letter.
- (d) Placement of the licensee on probation for a specified period of time and subject to conditions the department may specify by rule, including requiring the licensee to attend continuing education courses, to demonstrate competency through a written or practical examination, or to work under the direct supervision of another licensee.
- (e) Imposition of an administrative fine not to exceed \$10,000 for each violation. When imposing any fine under this paragraph, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefited from by noncompliance,

whether the violation was committed willfully, and the compliance record of the violator.

(2) Any person who violates any provision of this chapter or rules adopted pursuant thereto commits a misdemeanor of the second degree and upon conviction is punishable as provided in ss. 775.082 and 775.083. For a subsequent violation, such person commits a misdemeanor of the first degree and upon conviction is punishable as provided in ss. 775.082 and 775.083.

(3) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department may bring an action to enjoin the violation or threatened violation of any provision of this chapter, or rule adopted under this chapter, in the circuit court of the county in which the violation occurred or is about to occur. Upon the departments presentation of competent and substantial evidence to the court of the violation or threatened violation, the court shall immediately issue the temporary or permanent injunction sought by the department. The injunction shall be issued without bond. A single act in violation of any provision of this chapter shall be sufficient to authorize the issuance of an injunction.

History.--s. 1, ch. 65-457; ss. 14, 35, ch. 69-106; ss. 9, 18, ch. 74-247; s. 64, ch. 74-383; s. 1, ch. 77-174; s. 6, ch. 78-95; s. 13, ch. 79-210; s. 2, ch. 81-318; ss. 8, 14, 15, ch. 82-167; ss. 2, 4, ch. 90-65; ss. 34, 37, ch. 92-115; s. 26, ch. 94-233; s. 33, ch. 2000-154.

Note.--Former ss. 487.14, 487.158(2), 487.165.

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