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CHAPTER 13.

PESTICIDE CONTROL ACT

SECTION 46-13-10. Short title; administration.

This chapter may be cited as the "South Carolina Pesticide Control Act" and must be administered by the State Crop Pest Commission.

SECTION 46-13-20. Definitions.

For purposes of this chapter:

A. The term "active ingredient" means:

- (1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;
- (2) 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 plants or the product thereof;
- (3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and
- (4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

B. The term "administrator" means the Administrator of the United States Environmental Protection Agency.

C. The term "adulterated" applies to any pesticide if:

- (1) its strength or purity falls below the professed standard or quality as expressed on its labeling under which it is sold;
- (2) any substance has been substituted wholly or in part for the pesticide; or
- (3) any valuable constituent of the pesticide has been wholly or in part abstracted.

D. The term "animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

E. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.

F. "Committee" means the Pesticide Advisory Committee.

G. (1) The term "certified Applicator" means any individual who is certified by the Director as being competent to use or supervise the use of any pesticide which is classified for restricted use.

(2) The term "private applicator" means a person who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity,

including forestry products, on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(3) The term “commercial applicator” means a person engaged in the business of using or supervising the use of any restricted use pesticide on the property of another.

(4) The term “noncommercial applicator” means a person (including officials or employees of federal, state or local government) who uses or supervises the use of any restricted use pesticide who is not a private applicator (whether or not he is a private applicator with respect to some uses) or a commercial applicator.

H. “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.

I. “Desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

J. “Device” means any instrument or contrivance containing or integrally associated with a pesticide, but not including equipment used for the application of pesticides when sold separately therefrom.

K. “Director” means the Director of the Division of Regulatory and Public Service Programs, College of Agricultural Sciences, Clemson University.

L. “Disinfectant” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any virus, bacteria or other microorganisms (except viruses, bacteria or other microorganisms on or in living man or other living animals).

M. “Environment” includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

N. “Equipment” means any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand sized household apparatus used to apply any pesticide or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

O. “Establishment” means any place where a pesticide or device is produced or held, for sale or distribution.

P. “Fungus” means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts) as for example, rust, smut, mildew, mold, yeast and bacteria, except those on or in living man or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.

Q. “Fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungus.

R. “Herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed or shrub.

S. “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 by the Secretary of the Interior under Public Law 91-135.

T. “Inert ingredient” means an ingredient which is not active.

U. “Ingredient statement” means a statement which contains:

(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and

(2) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

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

W. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

X. (1) The term "label" means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(2) The term "labeling" means all labels and all other written, printed, or graphic matter:

(a) accompanying the pesticide or device at any time; or

(b) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, The Department of Health, Education and Welfare, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

Y. The term "misbranded" shall apply:

(1) To any pesticide or device subject to this chapter:

(a) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading;

(b) If it is contained in a package or other container which does not conform to the standards established by the Administrator pursuant to Section 25(c)(3) of Public Law 92-516;

(c) If it is an imitation of or is distributed under the name of another pesticide or device without disclosure;

(d) If any word, statement, or other information, required by this chapter or regulations adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(2) To any pesticide:

(a) If its labeling bears any reference to registration under the provisions of this chapter unless such reference be required by regulations under this chapter;

(b) If the labeling does not contain a statement of the use classification under which the product is registered;

(c) If the label does not bear:

(i) Name, brand or trademark under which the pesticide is distributed;

(ii) An ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be 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; provided, that the Director may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container

makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(iii) Directions for use which are necessary for effecting the purpose for which the product is intended and if complied with adequate for the protection of health and the environment;

(iv) A warning or caution statement which may be necessary and which, if complied with, would be adequate to protect the health and environment;

(v) The net weight or measure of the contents subject to the provisions of Chapter 9 of Title 39 of the 1976 Code;

(vi) The name and address of the manufacturer, registrant or person for whom manufactured; and

(vii) The registration number assigned to each establishment in which it was produced if required by regulations under this chapter.

(d) If that pesticide contains any substance or substances in quantities highly toxic to man, determined, as provided by Section 46-13-30, unless the label bears, in addition to any other matter required by this chapter:

(i) The skull and crossbones;

(ii) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of an antidote or practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(e) If the pesticide container does not bear a label or if the label does not contain all the information required by this chapter or the regulations adopted under this chapter.

Z. "Nematode" means invertebrate animals of the Phylum Nematelminthes and Class Nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms."

AA. "Nematicide" means any substance intended for preventing, destroying, repelling or mitigating nematodes, other worms, or any other invertebrates which are destructive, constitute a liability, and may be classified as pests.

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

CC. "Pest" means (a) any insect, snail, slug, rodent, nematode, fungus, weed, or (b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Director declares to be a pest.

DD. "Pesticide" means (a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (b) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

EE. "Pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale pesticides classified for restricted uses for distribution directly to users. The term "pesticide dealer" does not include:

(1) Persons whose sales of pesticides are limited to pesticides which are not restricted use pesticides; or

(2) Practicing veterinarians and physicians who prescribe, dispense, or use pesticides in the performance of their professional services.

FF. "Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the products thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. Also the term "plant regulator" shall not be required to include any of such of those nutritional mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

GG. "Producer" means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device.

HH. "Produce" means to manufacture, prepare, compound, propagate or process any pesticide or device.

II. "Protect health and the environment" and "protection of health and the environment" mean protection against any unreasonable adverse effects on the environment.

JJ. "Public Law 92-516" means the Federal Environmental Pesticide Control Act of 1972 which amended the Federal Insecticide, Fungicide, and Rodenticide Act of 1947.

KK. "Registrant" means a person who has registered any pesticide pursuant to the provisions of this chapter.

LL. The term "registration" includes reregistration.

MM. "Restricted use pesticide" means any pesticide or pesticide use classified for restricted use by the administrator or the director.

NN. "Unreasonable Adverse Effects on the Environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

OO. "Under the Direct Supervision of a Certified Applicator". Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

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

SECTION 46-13-30. Duties delegated to Director.

A. The Commission shall delegate the duties provided in this chapter to the Director, and the Director is authorized after due notice and opportunity for a hearing:

(1) To declare as a pest any form of plant or animal life (except virus, bacteria, or other microorganisms on or in living man or other living animals) which is injurious to man, desirable animals, desirable plants, and land; and

(2) To determine which pesticides are highly toxic to man and shall, in making this determination, be guided by the federal definition of highly toxic, as defined in Title 40, Code of Federal Regulations 162.8 as issued or hereafter amended;

(3) To determine which pesticides, and the quantities of substances contained in pesticides, which are injurious to the environment, and shall be guided by the Environmental Protection Agency regulations in this determination; and

(4) To prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment.

B. The Director is responsible, after due notice and a public hearing, to make appropriate regulations for carrying out the provisions of this chapter, including but not limited to regulations providing for:

(1) The collection, examination, and reporting of samples of pesticides or devices;

(2) The safe handling, storage, display, and distribution of pesticides and their containers;

(3) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and size to alleviate danger of spillage, breakage, or misuse and shall be guided by federal regulations concerning pesticide containers;

(4) Labeling requirements of all pesticides required to be registered under provisions of this chapter;

(5) The labeling of devices;

(6) Adopting lists of restricted use pesticides for the State or for designated areas within the State if it is determined that such pesticides may require regulations restricting or prohibiting their distribution or use. The regulations may include the time and conditions of distribution or use of such restricted use pesticides; provided, that all persons may be required to maintain records as to the use of all, restricted use pesticides. The Director shall be guided by the Environmental Protection Agency regulations in adopting these lists.

C. In issuing such regulations, consideration shall be given to pertinent research findings and recommendations of other agencies of this State, the federal government, or other reliable sources and may by regulation require that notice of a proposed application of a restricted use pesticide be given to landowners adjoining the property to be treated or in the immediate vicinity thereof, if he finds that such notice is necessary to carry out the purpose of this chapter.

D. For the purpose of uniformity of requirements between the states and the federal government, and to avoid confusion endangering the environment, the Director may, after a public hearing, adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and restricted use pesticides as established by the Environmental Protection Agency or other federal or state agencies.

E. The Director may issue experimental use permits under the terms and conditions established by Section 5, Public Law 92-516.

F. The Director may provide for registration of pesticides formulated for distribution and use within the State to meet special local needs, pursuant to the terms and conditions specified in Section 24, Public Law 92-516.

SECTION 46-13-40. Registration of pesticides and devices.

(A) Every pesticide or device which is distributed within this State or delivered for transportation or transported in intrastate commerce or between points within this State through a point outside this State must be registered subject to this chapter. Sections 46-13-170 and 46-13-200 provide enforcement procedures. The registration must be renewed annually before September first.

(1) Products which have the same formula and are manufactured by the same person, the labeling of which contains the same claims and the labels of which bear a designation identifying the

product as the same pesticide, may be registered as a single pesticide. Additional names and labels must be added by supplemental statements during the current period of registration. The foregoing applies if the manufacturer is also the distributor. Products manufactured by one person for distribution by another and labeled as the distributor's products must be treated as separate products from those marketed as the manufacturer's products.

(2) A change in the labeling or formulas of a pesticide may be made within the current period of registration without requiring a registration of the product. Notwithstanding other provisions of this section, registration is not required for a pesticide shipped from one plant within this State to another plant within this State operated by the same person.

(3) Registration is not required if the pesticide is distributed under the provisions of an experimental use permit issued under Section 46-13-30(E) or an experimental use permit issued by the Environmental Protection Agency.

(B) The applicant for registration shall file a statement with the director which must include:

(1) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(2) the name of the pesticide;

(3) a complete copy or facsimile of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use;

(4) the use classification as provided in the Federal Insecticide, Fungicide, and Rodenticide Act when required by regulations under that act.

(C) The director, when he considers it necessary, may require the submission of the complete formula of a pesticide including the active and inert ingredients.

(D) The director may require a full description of the tests made and the results upon which the claims are based on a pesticide not registered federally or on a pesticide on which restrictions are being considered. For a renewal of registration, a statement is required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(E) The director may prescribe other necessary information by regulation.

(F) The applicant desiring to register a pesticide shall pay an annual registration fee in accordance with the provisions of Section 46-13-45. Registrations expire on August thirty-first each year.

(G) Registration approved by the director and in effect on the thirty-first day of August for which a renewal application has been made and the proper fee paid continues in effect until the director notifies the applicant that the registration has been renewed or otherwise denied in accord with this section. Forms for reregistration must be mailed to registrants at least thirty days before the due date.

(H) If the renewal of a pesticide registration is not filed before September first of any one year, an additional fee of twenty-five dollars for each label must be assessed and added to the original fee and paid by the applicant before the registration renewal for that pesticide may be issued. The payment of the additional fee is not a bar to prosecution for doing business without proper registry.

(I) If it appears to the director that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this chapter and if approved and registered by the Environmental Protection Agency under Public Law 92-516, the product must be registered.

(J) The director shall publish an annual report of the results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides. Individual distribution information is not a public record.

(K)(1) In submitting data required by this chapter, the applicant may:

(a) clearly mark portions which in his opinion are trade secrets or commercial or financial information;

(b) submit the marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding other provisions of this chapter, the director may not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except when necessary to carry out this chapter, information relating to formulas of products acquired by authorization of this chapter may be revealed to a state or federal agency consulted.

(3) If the director proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under item (2), he shall notify the applicant or registrant, in writing, by certified mail. The director may not make the data available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period the applicant or registrant may institute an action in appropriate court for a declaratory judgment as to whether the information is subject to protection under item (2).

SECTION 46-13-45. Pesticide registration fees; classes of fees.

There are two classes of pesticide registration fees as follows:

(1) Basic. All pesticide products will be classified as basic pesticides, solely for determination of the annual registration fee. The classification will not affect a pesticide's state or federal classification as a general use pesticide or a restricted use pesticide. All registrants shall pay an annual basic registration fee of one hundred dollars per product registered. This fee must be used to support the general pesticide regulatory and education program.

(2)(a) Special. In instances where identifiable types of pesticides require regulatory activities exceeding those provided by the general regulatory program, the director in consultation with pesticide registrants shall prepare and submit to the legislature a report containing:

(i) the identity of the particular types of pesticides and a listing of such pesticides which warrant special regulatory activity;

(ii) an evaluation and explanation of the special regulatory activity necessary, the approximate duration, and the costs of implementing and maintaining this activity;

(iii) a recommendation of the appropriate allocation of these costs; and

(iv) a recommendation of a special registration fee to collect the necessary amount to be paid by the registrants to fund the special regulatory activity.

(b) All special fees collected must be devoted exclusively to the special regulatory activities for which they were established and are not subject to any direct or indirect charges, costs, or assessments by any state agency. Special fees must be terminated when the special regulatory activities which these fees support are no longer required.

SECTION 46-13-50. Licensing of pesticide dealers.

A. (1) After October 21, 1976, no person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this chapter. A separate license and fee shall be obtained for each establishment from which restricted use pesticides are distributed, sold, held for sale, or offered for sale directly to the user or for resale.

(2) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Director. Each initial application shall be accompanied by a fee of twenty-five dollars; additional license for applicants at the same location shall be five dollars per applicant. All licenses issued under this chapter shall expire on December thirty-first of the year for which they are issued.

(3) The license for a pesticide dealer may be renewed annually upon application to the Director accompanied by a fee of twenty-five dollars for each license, on or before the first day of January of the calendar year for which the license is issued.

(4) Every licensed pesticide dealer who changes his address or place of business shall notify the Director within ten days.

(5) The Director shall issue to each applicant that satisfies the requirements of this chapter a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended.

(6) If an application for renewal of a pesticide dealer license is not filed on or prior to January first of any one year an additional fee of twenty-five percent of the original fee shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued; provided, that such additional fee shall not apply if the applicant furnishes an affidavit that he has not operated as a licensed pesticide dealer subsequent to the expiration of his prior license.

B. (1) An applicant for a license must present evidence satisfactory to the Director concerning his qualifications for such license. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Director his knowledge of pesticides, their usefulness and their hazards, his competence as a pesticide dealer; and his knowledge of the laws and regulations governing the use and sale of pesticides.

(2) The Director shall by regulation designate what persons or class of persons shall be required to pass the examination in the case of a pesticide dealer operating more than one location, and in the case of an applicant that is a corporation, governmental unit or agency, or other organized group.

C. (1) Every licensed pesticide dealer shall submit to the Director with each application for an original or renewal license, and at such other times as the Director may prescribe, the names of all persons employed by him who sell or recommend restricted-use pesticides.

(2) Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use of application of pesticides.

(3) Provisions of this section shall not apply to a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application; or any federal, state, county, or municipal agency which provides pesticides only for its own programs.

D. The Director shall prescribe regulations requiring pesticide dealers to maintain such records with respect to their operations as necessary for the effective enforcement of this chapter.

After an opportunity for a hearing, the Director may require additional information to be included in these records.

E. No person shall sell a restricted use pesticide to an establishment in South Carolina from which such pesticides are sold, distributed, held for sale, or offered for sale unless the establishment is licensed as provided in this chapter.

SECTION 46-13-55. Regulation of structural pest control activity.

Structural pest control activity must be regulated by the director in accordance with this chapter and the regulations promulgated by its authority. The director may promulgate the necessary regulations relating to structural pest control activity.

SECTION 46-13-60. Standards for certification of pesticide applicators; applicators' licenses.

The director may prescribe standards for the certification of applicators of pesticides. The standards must conform with the standards for certification as specified by Section 4, Public Law 92-516. The standards for certification of private applicators of restricted use pesticides do not become effective except as becomes necessary under Section 4, Public Law 92-516 and the resulting regulations established under that law.

(1) Private applicators:

(a) No "private applicator" may use or supervise the use of a "restricted use pesticide" which is restricted to use by "certified applicators" without that private applicator first complying with the certification requirements necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.

(b) Certification standards to determine the individual's competency with respect to the use of the pesticide or class of pesticides the private applicator is to be certified to use must be promulgated by the director.

(i) To be certified as a private applicator to use "restricted use pesticides" (categorized for this examination requirement) the applicant is required to pass a written or oral examination or otherwise demonstrate his competency with respect to the use of the pesticide or category of pesticides covered by his certification before purchase and use of the product.

(ii) Applications for a private applicator's license must be in the form and must contain the information prescribed by the director. Each application must be accompanied by a fee equaling one dollar a valid year. All licenses issued under this chapter expire on December thirty-first of the year that the license is dated to expire.

(iii) Private applicator licenses, issued by the director, are valid for a period as prescribed by the director in regulations. The director may renew a private applicator license without reexamination. The director by regulation shall establish provisions, which do not include reexamination unless required to do so by federal law, to ensure that private applicators continue to meet the requirements of changing technology and to ensure a continuing level of competence and ability to use pesticides safely and properly.

(iv) If the director does not issue or renew a private applicator's license, he shall inform the applicant in writing of the reasons therefor. The applicant is eligible for reexamination after thirty days.

(2) Other applicators:

(a) Application for a license must be made in writing to the director on a designated form obtained from the director's office. Each application for a license must contain information regarding the applicant's qualifications and proposed operations, the type of license (commercial or noncommercial), the license classification for which the applicant is applying, and must include the following:

(i) the full name of the person applying for the license;

(ii) the principal business address of the applicant in the State and elsewhere;

(iii) the name and address of a person, who may be the Secretary of State, whose domicile is in the State, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;

(iv) the type of equipment (excluding manually powered equipment) used by the applicant to apply pesticides.

(b) The director may not issue a commercial or noncommercial applicator's license until the individual who uses or supervises the use of a restricted use pesticide is certified by passing an examination to demonstrate to the director his knowledge of how to use and supervise the use of pesticides under the classifications he has applied for, and his knowledge of the nature and effect of pesticides he may apply under those classifications.

(c) If the deputy director finds the applicant qualified to use and supervise the use of pesticides in the classifications he has applied for, and if an applicant applying for a commercial applicator license files the evidence of financial responsibility required under Section 46-13-100, 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, the Division of Aeronautics of the Department of Commerce for the State, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the deputy director shall issue a pesticide applicator's license limited to the classifications for which he is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the deputy director for cause. The deputy director may limit the license of the applicant to the use of certain areas, or to certain types of equipment if the applicant is only so qualified.

(d) An applicator license issued to an individual representing a government entity or a corporation, partnership, sole proprietorship, or other juridical person, is valid only so long as that individual satisfying the examination requirement of Section 46-13-60(2)(b) is employed by the business, or is an official or employee of the governmental entity. A licensee shall notify the director within thirty days of the date of invalidation of a license pursuant to this provision. Supervision required by a licensee pursuant to this chapter must be performed only by an individual satisfying the examination requirement of Section 46-13-60(2)(b).

(3) All persons:

(a) No person (including officials or employees of federal, state, or local government) may use or supervise the use of a restricted use pesticide without a private, commercial, or noncommercial applicator license issued by the director.

(b) An annual fee of twenty-five dollars for each pesticide applicator's license issued to each office at which records relative to the sale or application of pesticides are maintained is required. Payment of this annual fee permits the certification of one individual under any or all of the classifications. A five dollar annual fee is required to certify each additional applicant who desires to be certified in any one classification. Noncommercial applicators are exempt from all fee requirements.

(c) If a license is not issued as applied for, the director shall inform the applicant in writing of the reasons for the denial.

(d) An applicant is eligible for reexamination after thirty days.

(e) The license of an applicator whose financial responsibility, as required by Section 46-13-100 lapses, expires, or otherwise ceases to comply is suspended automatically until proof of continuing responsibility is provided by the applicator. It is unlawful for the person to engage in the business of applying pesticides until the financial responsibility is brought into compliance with the requirements of Section 46-13-100, and his license is reinstated by the director. If the applicator fails to reinstate his financial responsibility within three months or his applicator's license expires sooner, his license automatically is revoked and must not be restored until he has complied with the requirements of this section.

SECTION 46-13-70. Classification of certified applicators' licenses.

The Director shall classify licenses to be issued to certified applicators under this chapter. Such classifications may include but not be limited to ground, aerial, or manual methods used by any licensee to apply pesticides or the use of pesticides to control pests.

SECTION 46-13-80. Expiration and renewal of licenses.

(A) All licenses provided for in this chapter expire December thirty-first of the year dated to expire. A person holding a current valid license may renew the license upon payment of applicable fees and without reexamination.

(B) The director by regulation shall establish provisions, which may not include reexamination, unless required to do so under federal law, to ensure that certified applicators continue to meet the requirements of changing technology and to ensure a continuing level of competence and ability to use pesticides safely and properly.

(C) If a license is not renewed by April first of the calendar year following its expiration, the licensee shall take another examination. If application for renewal of a license is not filed before January first annually, a penalty of twenty-five percent of the original fee must be assessed.

SECTION 46-13-90. Denial, suspension, revocation or modification of licenses and certificates.

(1) The Director, after opportunity for a hearing, may deny, suspend, revoke, or modify any provision of any license or certificate issued under this chapter, if he finds that the applicant or the holder of a license or certificate has violated any provision of this chapter or has been convicted or is subjected to a final order imposing a civil penalty under 7 U.S.C., subsection 136 (L), or if he has committed any of the following acts, each of which is declared to be a violation of this chapter.

A. Made false or fraudulent claims through any media, intentionally misrepresenting the effect of materials or methods to be utilized;

B. Made a pesticide recommendation or application inconsistent with the labeling or the Federal Environmental Protection Agency or South Carolina state registration for that pesticide;

C. Applied known ineffective or improper materials;

D. Knowingly operated faulty or unsafe equipment;

E. Made application of any pesticides in a grossly negligent manner;

- F. Refused or, after notice, neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order;
 - G. Refused or neglected to keep and maintain the records required by this chapter, or to permit access for inspection and copying of records as provided in this chapter;
 - H. Made false or fraudulent records, invoices or reports;
 - I. Used or supervised the use of a restricted use pesticide on the lands or property of another without first having an applicator's license issued under the terms of this chapter;
 - J. Used fraud or misrepresentation in making an application for, or renewal of, a license, or certification;
 - K. Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or certificate;
 - L. Aided or abetted a licensed or an unlicensed person to violate the provisions of this chapter, conspired with such a licensed or an unlicensed person to violate the provisions of this chapter, or allowed one's license, or certification to be used by another person;
 - M. Knowingly made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
 - N. Impersonated any federal, state, county or city inspector or official; or
 - O. Violated any provision of this chapter or of any rule or regulation or of any lawful order;
 - P. Used a pesticide under an experimental use permit contrary to the provisions of such permit.
- (2) Any licensee whose license is revoked under the provisions of this chapter shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking the license (not to exceed two years), or if an appeal is taken from the order or revocation, not to exceed two years from the date of the order or final judgment sustaining the revocation.

SECTION 46-13-100. Financial responsibility required for commercial applicator's license.

The director may not issue a commercial applicator's license until the applicant has furnished evidence of financial responsibility with the director which may include, but is not limited to, a surety bond or a liability insurance policy or certification protecting persons who may suffer legal damages as a result of the application of pesticides by the commercial applicator or his agents or employees.

(1) The amount of the financial responsibility provided in this section must be not less than twenty-five thousand dollars for property damage and public liability insurance. The director by regulation may increase the financial responsibility to not more than one hundred thousand dollars by category or classification. Financial responsibility must be maintained at not less than that sum at all times during the licensed period. The director must be notified ten days before a reduction or cancellation at the request of the applicant or cancellation or nonrenewal of surety financial responsibility by the surety or insurer. The director may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding one thousand dollars. If the applicant has not satisfied the requirement of the deductible clause it must not be accepted by the director unless the applicant furnishes the director with a surety bond or liability insurance which satisfies the amount of the deductible as to all claims that may arise in his application of pesticides. A surety bond or insurance policy must be issued by a company authorized to do business within this State. The bond must be filed with the department and exists for the benefit of a holder of a final judgment against the person

who filed the bond for personal liability or property damages, or both, as contemplated in item (4). Aerial applicators insured or bonded under Section 55-8-50, may utilize the coverage provided by that policy or bond if the policy or bond specifically covers personal injury or property damage, or both, caused by the aerial application of pesticides in the required amount. The aerial applicator shall furnish appropriate documentation of the coverage to the director.

(2) The director may provide by regulation for self insurance.

(3) Nothing in this chapter relieves a person from liability for damage to the person or lands of another caused by the use of pesticides even though the use conforms to the regulations promulgated by the director.

(4) The insurance or bond coverage required of commercial applicators must provide specifically for personal injuries or property damages, or both, caused by the application of pesticides by the commercial applicator or his agents or employees. However, this requirement does not guarantee control of the pest for which the application is made.

SECTION 46-13-110. Reporting of accidents and incidents.

The Director may by regulation require the reporting of significant pesticide accidents or incidents to the Department of Health and Environmental Control.

SECTION 46-13-120. Records as to use of restricted use pesticides.

The Director may require licensees to maintain records with respect to amount of restricted use pesticides used. Such records shall be kept for that period of time required by regulations promulgated by the Environmental Protection Agency under Public Law 92-516 from the date of the purchase of the pesticide to which such records refer, and the Director or his designee shall, upon submitting a request in writing, have access to inspect and copy all records required to be maintained by this chapter.

SECTION 46-13-130. Reciprocity.

The Director may issue a license or certificate on a reciprocal basis with other states and federal agencies without examination to a nonresident who furnishes evidence that he is licensed or certified in another state substantially in accordance with the provisions of this chapter; provided, that financial security as provided for in Section 46-13-100 is met.

Licenses or certifications issued pursuant to this subsection may be suspended or revoked in the same manner and on the same grounds as other licenses or certifications pursuant to this chapter, or upon suspension or revocation of the license, or certification of another state or the federal government supporting the issuance of a South Carolina license or certification.

SECTION 46-13-140. Exemptions from licensing requirements.

A. The provisions of Section 46-13-60 relating to licenses and requirements for their issuance shall not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of his veterinary practice; provided, that he is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation or does not publicly hold himself out as a pesticide applicator.

B. The provisions of Section 46-13-60 relating to licenses and requirements for their issuance shall not apply to medical personnel (both private and governmental) applying pesticides to man during the normal course of medical practice.

SECTION 46-13-150. Pesticide advisory committee.

There is created a pesticide advisory committee consisting of five licensed commercial applicators residing in the State, one of whom must be licensed to operate horticultural ground equipment, one must be licensed to operate agricultural ground equipment, one must be licensed to operate aerial equipment, and two must be licensed for structural pest control; one entomologist in public service; one toxicologist in public service; one herbicide specialist in public service; two members from the agrichemical industry, one of whom must be a pesticide dealer; two producers of agricultural crops or products on which pesticides are applied or which may be affected by the application of pesticides; one representative of the South Carolina Department of Natural Resources; one plant pathologist in public service; one representative of the South Carolina State Forestry Commission; one representative of the South Carolina Department of Agriculture; one representative of the South Carolina Department of Health and Environmental Control; and two citizens from the State at large. The members must be residents of this State and must be appointed by the Governor on the recommendation of the following organizations:

- (1) The South Carolina Aerial Applicators' Association shall recommend the pesticide applicator licensed to operate aerial equipment.
- (2) The South Carolina Pest Control Operator's Association shall recommend the pesticide applicator licensed to operate horticultural ground equipment and two pesticide applicators licensed for structural pest control.
- (3) The Vice President and Vice Provost of Agriculture and Natural Resources of Clemson University shall recommend the herbicide specialist in public service, the entomologist in public service, and the plant pathologist in public service.
- (4) The members of the South Carolina Fertilizer and Agrichemical Association shall recommend the member from the agrichemical industry and the pesticide dealer.
- (5) The South Carolina Farm Bureau shall recommend the two producers of agricultural crops or products on which pesticides are applied or which may be affected by the application of pesticides, and the commercial applicator licensed to operate agricultural ground equipment.
- (6) The Director of the South Carolina Department of Natural Resources shall recommend the member from the South Carolina Department of Natural Resources.
- (7) The State Forester shall recommend the member from the South Carolina State Forestry Commission.
- (8) The Commissioner of Agriculture shall recommend the member from the South Carolina Department of Agriculture.
- (9) The director of the Department of Health and Environmental Control shall recommend the member from that department.
- (10) The administrator of the Department of Consumer Affairs shall recommend the two citizens at large.

Such members shall be appointed for terms of four years and may be appointed for successive terms; provided, that at the inception of this chapter the pesticide applicator licensed to operate aerial equipment, the entomologist in public service, the herbicide specialist, one of the two

producers of agricultural crops, and the representative from the South Carolina Department of Agriculture shall be appointed for two years; the pesticide applicator licensed for structural pest control, one of the two pesticide applicators licensed to operate ground equipment, one of the two producers of agricultural crops, the pesticide dealer representing the South Carolina Pesticide Association, and the plant pathologist in public service shall be appointed for a period of three years; one of the two pesticide applicators licensed to operate ground equipment, the toxicologist in public service, the member of the agrichemical industry representing the South Carolina Pesticide Association, the representative of the South Carolina Department of Natural Resources, the representative from the South Carolina Commission of Forestry and the representative from the Department of Health and Environmental Control shall be appointed for a period of four years. All subsequent terms for appointment to such committee shall be for a period of four years.

The appointing organizations shall have the authority to recommend the removal of the appointees prior to the expiration of their term of appointment for cause.

Upon the death, resignation, or removal for cause of any member of the committee, such vacancy shall be filled within thirty days of its creation for the remainder of its term in the manner herein prescribed for appointment to the committee.

The committee shall elect one of its members chairman. The members of the committee shall meet at such time and at such place as shall be specified by the call of the Director, Chairman, or a majority of the committee.

The committee shall advise the Director on any or all problems relating to the use and application of pesticides. This may include pest control problems, environmental or health problems related to pesticide use, and review of needed legislation, regulations and agency programs.

SECTION 46-13-160. Information and courses of instruction.

The Cooperative Extension Service and other divisions of Clemson University shall, in cooperation with other public educational institutions and any other state agency, publish information and conduct short courses of instruction in the areas of knowledge required in Section 46-13-60.

SECTION 46-13-170. Inspection of premises; legal actions; “stop sale, use, or removal” orders.

(A) For the purpose of carrying out the provisions of this chapter, the Director or his designated agents may enter upon any public or private premises at reasonable times, by consent or by warrant in order to carry out any of the provisions of this chapter.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of such sample equal in volume or weight to the portion retained. If an analysis is made of such

samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(B) For purposes of enforcing the provisions of this chapter and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this chapter have been violated, officers or employees duly designated by the Director are empowered to obtain and to execute warrants authorizing:

(1) entry for the purpose of this section;

(2) inspection and reproduction of all records showing quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found which is adulterated, misbranded, not registered (in the case of a pesticide) or otherwise in violation of this chapter and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

(3) the seizure of any pesticide or device which is in violation of this chapter.

(C)(1) The examination of pesticides or devices shall be made in such place as the Director may designate for the purpose of determining from such examinations whether they comply with the requirements of this chapter. If it shall appear from any such examination that they fail to comply with the requirements of this chapter, the Director shall cause notice to be given to the person against whom criminal or civil proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Director it appears that the provisions of this chapter have been violated by such person, then the Director shall certify the facts to the appropriate authorities, with a copy of the results of the analysis or the examination of such pesticide.

(2) The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Director.

(3) Nothing in this chapter shall be construed as requiring the director to institute proceedings for prosecution of minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

(D) When the Director has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this chapter, or of any of the prescribed regulations under this chapter, he may issue and serve a written "stop sale, use, or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the Director may attach the order to the pesticide or device and notify the registrant. The pesticide or device shall not be sold, used, or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the Director or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction.

SECTION 46-13-175. Discretion to make pesticides available for minor uses.

The director shall use discretion to waive any provisions of this chapter, as necessary, to insure the availability of pesticides for minor uses.

SECTION 46-13-180. Penalties.

(1) Criminal Penalty. Any person who wilfully violates the provisions of this chapter or regulations promulgated pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction shall be punished as follows:

(a) For a first offense, by a fine of not more than one hundred dollars or imprisonment for not more than thirty days;

(b) For a second offense, by a fine of not more than five hundred dollars or imprisonment for not more than sixty days;

(c) For a third or subsequent offense, by a fine of not more than one thousand dollars or imprisonment for not more than ninety days.

(2) Civil Penalty. In addition to a denial, suspension, revocation, or modification of a license or certificate or any other penalty as set forth in this chapter, an applicant, a holder of a license or certificate, or a person who receives compensation for making a pesticide application on property who violates a provision of this chapter may be assessed a civil penalty by the director of not more than one thousand dollars for each offense. The provisions of this subsection do not apply to a homeowner who makes a pesticide application in his home in accordance with state and federal law.

SECTION 46-13-185. Prosecution of criminal violators; use of counsel.

The director may prosecute criminal violators of this chapter and may use his own counsel in inferior courts but only when the defendant chooses to be represented by counsel. Counsel employed by the director may assist the solicitor, when requested, in general sessions court, the Court of Appeals, and the Supreme Court.

SECTION 46-13-190. Subpoenas.

The Director may issue subpoenas to compel the attendance of witnesses or production of books, documents and records anywhere in the State in any hearing affecting the authority or privilege granted by a license or permit issued under the provisions of this chapter.

SECTION 46-13-200. Adjudication of alleged violations; disposal of condemned pesticides or devices.

A. After service of a “stop sale, use, or removal” order is made upon any person, either that person, the registrant, or the Director may file an action in a court of competent jurisdiction in the county in which a violation of this chapter or regulations adopted thereunder is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this chapter or regulations adopted thereunder.

B. If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and if such pesticide or device is sold, the proceeds, less costs including legal costs, shall be paid to the State treasury; provided, that the pesticide or device shall not be sold contrary to the provisions of this chapter or regulations adopted thereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct

that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing, or otherwise bringing the product into compliance.

SECTION 46-13-210. Judicial review.

A person aggrieved by action of the director in a contested case, as defined in Section 1-23-310, may obtain a review of the case pursuant to the Administrative Procedures Act.

SECTION 46-13-220. Delegation of authority to employees of Clemson University.

The functions vested in Clemson University by this chapter may, from time to time, be delegated to such employees of Clemson University as may be designated by the Director.

SECTION 46-13-230. Disposition of fees.

All fees collected pursuant to the provisions of this chapter shall be retained by the Director of the Division of Regulatory and Public Service Programs of Clemson University and deposited in a separate fund for use in the administration of this chapter.

SECTION 46-13-240. Federal, interstate and intrastate cooperation.

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

- A. To secure uniformity of regulations;
- B. To cooperate in the enforcement of the Federal Pesticide Control Laws through the use of state and federal personnel and facilities and to implement cooperative enforcement programs;
- C. To develop and administer state programs for training and certification of certified applicators consistent with federal standards;
- D. To contract for training with other agencies including federal agencies for the purpose of training certified applicators;
- E. To contract for monitoring pesticides for the national plan;
- F. To prepare and submit state plans to meet federal certification standards; and
- G. To regulate certified applicators.