

Pesticide Control Act

Chapter 76, Article 4

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76-4-1. Title.

This act may be cited as the "Pesticide Control Act."

76-4-2. Enforcing agency.

The Pesticide Control Act shall be administered and enforced by the state department of agriculture, under the direction of the board of regents, New Mexico state university.

76-4-3. Definitions.

As used in the Pesticide Control Act:

A. "equipment" means any type of ground, water or aerial equipment, device or contrivance using motorized, mechanical or pressurized power to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but does not include any pressurized hand-sized household device used by a homeowner to apply a pesticide or any equipment, device or contrivance of which the person who is applying the pesticide on the person's own land is the source of power or energy in making the pesticide application;

B. "board" means the board of regents of New Mexico state university;

C. "department" means the New Mexico department of agriculture;

D. "device" means any instrument or contrivance other than a firearm that is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than humans and other than bacteria, viruses or other microorganisms on or in any living thing other than plants, but does not include equipment used for the application of pesticides when sold separately therefrom, or traps used to control predators or rodents or sterilization using dry heat or steam;

E. "distribute" means to offer for sale, hold for sale, sell, barter or supply in this state;

F. "environment" includes water, air and land and all plants and every living thing in water, in air and on land and the existing interrelationships;

G. "insect" means any of the numerous small invertebrate animals belonging principally to the class insecta, including beetles, bugs, bees, flies, and to other allied classes of arthropods, including spiders, mites, ticks, millipedes, centipedes and sowbugs;

H. "ingredient statement" means a statement that contains the name and percentage of each ingredient of any pesticide that is intended for one of the purposes under Paragraphs (1) through (4) of Subsection N of this section, and the total percentage of all ingredients in the pesticide not for one of those purposes. If the pesticide contains arsenic in any form, the ingredient statement shall contain a statement of the percentages of total and water-soluble arsenic, calculated as elemental arsenic;

I. "label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers;

J. "labeling" means all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the department, the United States environmental protection agency, United States departments of agriculture, the interior and health and human services, state agricultural universities and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

K. "land" means all land and water areas, including air space, and all living things and all structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;

L. "person" has the extended meaning ascribed to it in Subsection E of Section 12-2A-3 NMSA 1978;

M. "pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, that the board by rule declares to be a pest;

N. "pesticide" means any substance or mixture of substances intended for:

(1) preventing, destroying, repelling or mitigating any pest;

(2) causing the leaves or foliage to drop from a plant, with or without causing abscission;

(3) artificially accelerating the drying of plant tissue; or

(4) accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior, of ornamental or crop plants or the produce thereof, through physiological action, but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments;

O. "pesticide dealer" means any person who distributes highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by licensed pesticide dealers;

P. "pest management consultant" means any individual who offers or supplies technical advice or makes recommendations to the user of highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by licensed pesticide dealers;

Q. "registrant" means a person who has registered any pesticide pursuant to the provisions of the Pesticide Control Act;

R. "restricted use pesticide" means any pesticide or device designated by the board as requiring specific restrictions to prevent unreasonable adverse effects on the environment, including humans, beneficial insect predators and parasites, pollinating insects, animals, crops, wildlife and lands but excluding the pests the pesticide or device is intended to prevent, destroy, control or mitigate;

S. "unreasonable adverse effects on the environment" means an unreasonable risk to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide;

T. "noncommercial applicator" means a person who uses or demonstrates restricted use pesticides and does not qualify as a private applicator and is not required to have a commercial applicator's license;

U. "private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the certified applicator or the certified applicator's employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

V. "public applicator" means a certified applicator who as an employee of a federal, state, county or municipal agency or municipal corporation uses any pesticide that is classified for restricted use or any general use pesticide, when applied to sites or under conditions identified by rule promulgated by the board; and

W. "commercial applicator" means a certified applicator, whether or not the certified applicator is a private applicator with respect to some uses, who for compensation uses or supervises the use of any pesticide for any purpose on any property other than as provided by Sections 76-4-19 and 76-4-20.1 NMSA 1978.

76-4-4. Misbranded.

A pesticide or device is misbranded if:

A. its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading;

B. it is contained in a package or other container or wrapping which does not conform to the standards established by the board;

C. it is an imitation of or is distributed under the name of another pesticide or device;

D. any word, statement or other information, required by the Pesticide Control Act 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;

E. the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product was intended and if complied with, together with any requirements imposed by the Pesticide Control Act and regulations adopted by the board, are adequate to prevent injury to plants and animals including man, and protect against any unreasonable adverse effects on the environment;

F. the labeling bears any reference to registration under the provisions of the Pesticide Control Act unless such reference is required by regulations adopted pursuant to the Pesticide Control Act;

G. the label does not bear:

(1) the name and address of the producer, registrant or person for whom produced;

(2) the name, brand or trademark under which the pesticide is distributed;

(3) 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. However, the department 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 the ingredient statement on the part which is presented or displayed under customary conditions of purchase;

(4) directions for use and a warning or caution statement which are necessary and which, if complied with, would be adequate for the protection of health and protection against injury to plants and animals including man and protection against any unreasonable adverse effects on the environment;

(5) the net weight or measure of the contents;

(6) the registration number assigned the pesticide and the registration number of the person formulating the pesticide by the United States environmental protection agency; and

(7) a statement of the use classification under which the product is registered, if required by federal or state regulations;

H. the pesticide contains any substance or substances in quantities highly toxic to man, as determined by the board unless the label bears, in addition to any other matter required by the Pesticide Control Act:

(1) the skull and crossbones or any other symbol required for registration by the United States environmental protection agency;

(2) the word "POISON" prominently printed in red on a background of distinctly contrasting color; and

(3) a statement of an antidote or practical treatment in case of poisoning by the pesticide;

I. the pesticide container does not bear a label or if the label does not contain all the information required by the Pesticide Control Act and the regulations adopted pursuant to the act, or both;

J. the label for a spray adjuvant fails to state the type or function of the functioning agents; or

K. the label is not printed in English and Spanish, as prescribed by the United States environmental protection agency and by regulations of the board.

76-4-5. Prohibited acts.

A. It is unlawful for any person to distribute within the state, to deliver for transportation or transport in intrastate commerce, or between points within this state through any point outside this state, or use any of the following:

(1) any pesticide which has not been registered in accordance with the Pesticide Control Act or regulations adopted pursuant to that act;

(2) any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition as represented in connection with its registration, differs. However, at the discretion of the department, a change in the labeling of a pesticide except changes in the ingredient statement may be made within a registration period without requiring reregistration of the product if the change will not have unreasonable adverse effects on the environment;

(3) any pesticide, unless it is in the unbroken immediate container of the registrant or manufacturer and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing information required in the Pesticide Control Act and the regulations adopted pursuant to that act;

(4) any pesticide which has not been colored or discolored as required by the Pesticide Control Act;

(5) any pesticide which does not meet the professed standard of quantity or quality, as expressed on the labeling under which it is sold, or in which any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent has been wholly or in part abstracted or if any contaminated is misbranded or is present in an amount determined by the department to be a hazard;

(6) any device which is misbranded; or

(7) any pesticide in containers violating regulations adopted pursuant to the Pesticide Control Act, or pesticides found in damaged containers which constituted a hazard to the environment.

B. It is unlawful:

(1) to distribute a restricted use pesticide to any person who is required by law or regulations promulgated pursuant to the Pesticide Control Act to have a permit to use or purchase restricted use pesticides, unless the person or his agent, to whom sale or delivery is made, has a valid permit to use or purchase the kind and quantity of the restricted use pesticide. However, subject to conditions established by the department, such permit may be obtained from any person designated by the department immediately prior to distribution;

(2) for any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in the Pesticide Control Act or regulations adopted pursuant to that act, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of the Pesticide Control Act or the regulations adopted thereunder;

(3) for any person to use or cause to be used any restricted use pesticide contrary to directions on the label or to regulations of the board if those regulation differ from or further restrict the labeling;

(4) for any person to use for his own advantage or to reveal, other than to the department, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of a practical treatment including first aid, in case of poisoning, any information relative to formulas of products acquired by authority of the Pesticide Control Act;

(5) for any person to handle, transport, store, display, distribute or use pesticides in such a manner as to endanger man and his environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides; or

(6) for any person to dispose of, discard or store any pesticides or pesticide containers in a manner that may cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any water supply or waterway.

76-4-6. Registration.

A. Each pesticide or device that is distributed within the 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 with the department subject to the provisions of the Pesticide Control Act. However, the registration is not required if a pesticide is shipped from one plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of the Pesticide Control Act.

B. The applicant for registration shall file a statement with the board which includes:

(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 or device;

(3) other necessary information required for completion of the application for registration form;

(4) a complete copy of the labeling accompanying the pesticide or device and a statement of all claims including the directions and precautions for use; and

(5) the use classification of the pesticide, if required by federal or state regulations.

C. The department when it deems it necessary in the administration of the Pesticide Control Act, may require the submission of the complete formula of any pesticide including all ingredients which will prevent, destroy, repel, control or mitigate pests, or which will act as a plant regulator, defoliant, desiccant or those which act as a functioning agent in a spray adjuvant, and all ingredients which do not perform these functions.

D. The department may require a full description of the tests made and the results thereof upon which the claims are based on any pesticide, device or on any pesticide or device on which restrictions are being considered. In the case of renewal of registration, the applicant shall be required to furnish only information which is different from that furnished when the pesticide was registered or reregistered during the previous license year.

E. The board may prescribe other necessary information by regulation.

F. The applicant desiring to register a pesticide or device shall pay an annual prescribed registration fee for each pesticide or device registered.

G. Any registration approved by the department and in effect on December 31 of the year for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until the department notifies the applicant that the registration has been renewed or denied in accord with the provisions of the Pesticide Control Act. Forms for reregistration shall be mailed to registrants at least thirty days prior to the due date.

H. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide or device and its labeling and other material submitted comply with the requirements of the Pesticide Control Act, the department shall register the pesticide or device.

I. All federal, state and county agencies or municipalities shall register all pesticides or devices distributed by them but shall not be required to pay the registration fee.

76-4-7. Experimental use permits.

A. No person shall conduct field tests using a pesticide not registered with the department or a registered pesticide for a use not previously approved in the registration without first having obtained an experimental use permit from the department.

B. Any person may apply to the department for an experimental use permit for a pesticide. The department may issue an experimental use permit if it determines that the applicant needs the permit in order to accumulate information

necessary to register a pesticide. The department may refuse to issue an experimental use permit if it determines that issuance of such permit is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.

C. Use of a pesticide under an experimental use permit shall be under the supervision of the department and shall be subject to the terms and conditions and be for the period of time prescribed by the department in the permit.

D. The department may revoke any experimental use permit at any time, if it finds that the terms or conditions of the permit are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

76-4-8. Refusal to register; cancellation; suspension.

A. If it does not appear to the department that the pesticide or device warrants the proposed claims or if the pesticide or device and its labeling and other required material do not comply with the provisions of the Pesticide Control Act or regulations adopted thereunder, the department shall notify the applicant of the manner in which the pesticide, device, labeling or other required material fails to comply with the provisions of the Pesticide Control Act and permit the applicant to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the department may refuse to register the pesticide or device.

B. The department may, when it determines that a pesticide or device or its labeling does not comply with the provisions of the Pesticide Control Act or the regulations adopted thereunder, cancel the registration of a pesticide or device.

C. The department shall, when it determines that a situation exists in which the continued use of a pesticide during the time required for cancellation under the Pesticide Control Act would likely result in unreasonable adverse effects on the environment, suspend on their own motion, the registration of a pesticide or device.

76-4-9. Department to administer and enforce act; board to adopt regulations; scope of regulations.

The department shall administer and enforce the provisions of the Pesticide Control Act and regulations promulgated by the board.

A. The board may after notice and public hearing adopt regulations for carrying out the purpose and provisions of the Pesticide Control Act, including regulations providing for:

- (1) declaring as a pest any form of plant or animal life or virus, other than man and other than bacteria, viruses and other microorganisms on or in living man or other living animals, which is injurious to health or the environment;
- (2) designating certain pesticides to be highly toxic to any animal including man;
- (3) determining standards for identifying pesticides by color, taste, odor or form;
- (4) the collection and examination of devices or samples of pesticides for analysis;
- (5) requiring pesticide applicators to notify land owners of property adjoining the property to be treated, or in the immediate vicinity thereof, of a proposed application of a pesticide, if such a notice is necessary to carry out the purpose of the Pesticide Control Act; and for a hearing before the director of the department of any objecting owner of property adjoining the property to be treated before the application of the pesticide;
- (6) the safe handling, transportation, storage, display, distribution, use and disposal of pesticides and their containers;
- (7) establishing standards with respect to the package, container or wrapping in which a pesticide is distributed;
- (8) 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 or any combination thereof to alleviate danger of spillage, breakage, misuse or any other hazard to the public;
- (9) procedures for making pesticide recommendation;
- (10) adopting a list of restricted use pesticides for the state or for designated areas within the state;
- (11) regulating the time and conditions of distribution, sale or use of the restricted use pesticides;
- (12) requiring all persons issued licenses to offer technical advice, to sell or to use restricted use pesticides to maintain records as prescribed by the department;
- (13) certification of private applicators;
- (14) label requirements of all pesticides required to be registered under provisions of the Pesticide Control Act;
- (15) regulating the labeling of devices;

(16) procedures and techniques to be used in sampling land, including agricultural products that are to be consumed by man or animals for pesticide residues;

(17) classifying pesticides for general use, restricted use or both;

(18) prescribing methods to be used in the application of pesticides where the department finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Control Act. Such regulations may relate to the time, manner, methods, materials and amounts and concentrations in connection with the application of the pesticides and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to plants, including forage plants, or adjacent or nearby lands; wildlife in the adjoining or nearby areas; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals or beneficial insects. In issuing such regulations, the board shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government or other reliable sources;

(19) requiring any pesticide use dilution to be colored or discolored if it determines that such requirement is feasible and is necessary for the protection of health and the environment;

(20) establishing good pesticide use and handling practices for commercial pesticide applicators;

(21) establishing requirements for supervision of servicemen of structural pest control applicators; and

(22) regulating false or misleading advertisement in the sales or use of pesticides and devices.

B. The board shall adopt regulations that are consistent with regulations of the New Mexico environmental improvement board, the New Mexico water quality control commission and the laws administered by the regulations of the United States environmental protection agency.

C. The department is authorized to specify the quantities and concentrations of restricted use pesticides that may be applied.

76-4-9.1. State preemption.

Except as otherwise authorized in the Pesticide Control Act, no city, county or other political subdivision of the state and no home rule municipality shall adopt or continue in effect any ordinance, rule, regulation or statute regarding the registration, labeling, distribution, sale, handling, use, application, transportation or disposal of pesticides.

76-4-10. Sampling and examination of pesticides or devices; residue analysis.

A. The sampling and examination of pesticides or devices shall be made under the direction of the department for the purpose of determining if they comply with the requirements of the Pesticide Control Act.

B. The sampling of land, including agricultural products that are to be consumed by man or animals, may be made by the department to determine if pesticide residues are present that will cause unreasonable adverse effects on the environment or if the residues exceed the tolerance established by the United States environmental protection agency, New Mexico environmental improvement agency [department of environment] or restrictions established by other federal or state regulatory agencies.

76-4-11. "Stop sale, use or removal" order.

When the department has reasonable cause to believe a pesticide or device is being distributed, used, stored or transported in violation of any of the provisions of the Pesticide Control Act or regulations adopted pursuant thereto, the department may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of the pesticide or device. If the owner or custodian is not available to receive the order, the department may attach the order to the pesticide or device and notify the registrant. The pesticide or device shall not be distributed, used or removed until the provisions of the Pesticide Control Act have been complied with and the pesticide or device has been released in writing under conditions specified by the department or the alleged violation has been otherwise disposed of as provided in the Pesticide Control Act by a court of competent jurisdiction.

76-4-12. Judicial action after "stop sale, use or removal" order.

A. After service of a "stop sale, use or removal" order is made upon any person, that person or the registrant or the department may file an action in a court of competent jurisdiction, in the county in which a violation of the Pesticide Control Act 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 that does not meet the requirements of the Pesticide Control Act 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. However, the pesticide or device shall not be sold contrary to the provisions of the Pesticide Control Act or regulations adopted thereunder. Upon payment of the costs of the condemnation proceedings and the execution and delivery of a bond as prescribed by the court to assure the pesticide or device shall not be sold or disposed of contrary to the provisions of the Pesticide Control Act or regulations adopted pursuant thereto, 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.

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

76-4-13. Pesticide dealer license.

A. It is unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained an annual license from the department. A license shall be required for each location or outlet located within this state from which pesticides are distributed. Any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet.

B. Application for a license shall be accompanied by the prescribed annual license fee and shall be on a form provided by the department. The application shall include:

- (1) the full name and title of the person applying for the license;
- (2) the address of each outlet to be licensed;
- (3) the principal business address of the applicant;
- (4) the name of a person domiciled in this state authorized to receive and accept service of summons and legal notices of all kinds for the applicant; and
- (5) any other necessary information prescribed by the department.

C. 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 the pesticides are dispensed only through an apparatus used for such pesticide application, or any federal, state or county agency, or municipality which provides pesticides only for its own programs.

D. Each pesticide dealer shall be responsible for the acts of each individual employed by him in the solicitation and sale of pesticides and all claims and recommendations for the use of pesticides. The dealer license shall be subject to denial, suspension or revocation after a hearing for any violation of the Pesticide Control Act or regulations adopted thereunder, whether committed by the dealer or by an officer, agent or employee of the dealer.

76-4-14. Pest management consultant.

No individual shall perform services as a pest management consultant without first obtaining from the department an annual license. Application for a license shall be on a form provided by the department and shall be accompanied by the prescribed fee. Licensed pesticide applicators and operators and employees of federal, state and county agencies, or municipalities, when acting in their official capacities, shall be exempt from this licensing provision.

76-4-15. Public pest management consultant.

A "public pest management consultant" means any individual who is employed by a governmental agency or municipality to act as a pest management consultant. No person shall act as a public pest management consultant without first obtaining an annual nonfee license from the department. Application for a license shall be on a form provided by the department. The nonfee license shall be valid only when the consultant is acting in that capacity as an employee of his governmental employer. Federal and state employees whose principal responsibilities are in pesticide research shall be exempt from this licensing provision while acting in their official capacities.

76-4-16. Examinations for pest management consultant license.

The department shall require each applicant for a pest management consultant license or a public pest management consultant license to demonstrate the applicant's knowledge of pesticide laws and regulations, pesticide hazards and the safe distribution, use, application and disposal of pesticides by satisfactorily passing a written examination for the classification for which he has applied, prior to issuing his license. The prescribed examination fee shall be paid for the initial examination and other examinations needed to qualify the applicant to perform services as a pest management

consultant. The public pest management consultant shall not be required to pay the examination fee and an examination shall be administered upon request.

76-4-17. Commercial pesticide applicator license.

A. It is unlawful for any person to engage in the business of applying pesticides at any time to land not owned or occupied by him without a commercial pesticide applicator license issued by the department. The commercial pesticide applicator shall pay an annual prescribed fee for each license issued. Should any apparatus fail to pass inspection making it necessary for an additional inspection to be made, the department shall require a prescribed inspection fee. In addition to the required inspection, additional inspections may be made to determine if equipment is properly calibrated and maintained in conformance with the Pesticide Control Act and regulations adopted pursuant thereto.

B. Application for a license shall be on a form provided by the department.

C. The department shall not issue a commercial pesticide applicator license until the applicant has passed an examination to demonstrate his knowledge of how to apply pesticides under the classification or classifications he has applied for, and his knowledge of the nature and effect of pesticides he may apply. The department shall charge the prescribed examination fee for the initial examination and other examinations needed to qualify the applicant to apply pesticides.

D. The department shall renew any applicant's license under the classification for which the applicant is certified; provided that the applicant's license is not under a suspension or revocation order and he has met the provisions of the Pesticide Control Act.

E. The department shall not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted within the last five years of a felony involving fraud;

(2) the applicant has had revoked within the last two years a previous license authorized by the Pesticide Control Act;

(3) the applicant has been unable to satisfactorily fulfill the certification requirements; or

(4) [the applicant] has had any pesticide application or a license denied, revoked or suspended in any state in the last five years.

F. All applicants for a commercial applicator license shall meet at least one of the following requirements prior to being issued a license and shall file proof of compliance as specified by the department:

(1) documentation of two years of pesticide application experience in the category or related category for which application is being made; or

(2) documentation of one year of pesticide application experience in the category or related category for which application is being made and not less than twenty college credit hours in biological or agricultural sciences.

76-4-18. Operator license.

A. It is unlawful for any individual to act as an employee of a commercial pesticide applicator and apply pesticides without having obtained an operator license from the department.

B. The department shall issue an operator license when the applicant has passed an examination to demonstrate his ability to apply pesticides safely and effectively with the type of apparatus and in the classification for which he has applied. The department shall charge the prescribed examination fee for each examination administered.

C. The provisions of this section shall not apply to any individual who is a licensed commercial pesticide applicator.

76-4-19. Application of act to governmental entities; public applicator's license required.

A. A public applicator shall be subject to the provisions of the Pesticide Control Act and rules adopted pursuant to that act.

B. Public applicators shall be subject to examinations or other licensing provisions as provided in the Pesticide Control Act or by rule promulgated by the board. The department shall issue a limited license without fee to the public applicator who has qualified for the license. The public applicator license shall be valid only when the applicator is acting as an applicator applying pesticides used by federal, state, county or municipal agencies or municipal corporations. Government research personnel shall be exempt from this licensing requirement only when applying general use pesticides to experimental plots.

76-4-20. Private applicators.

A. No private applicator shall use a restricted use pesticide without first complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons.

B. In determining these certification requirements, the board shall take into consideration standards of the United States environmental protection agency. Certification requirements for a private applicator to be certified to use restricted use pesticides may include but shall not be limited to the following:

(1) the applicant shall acknowledge that he understands and will abide by the label precautions by signing a dealer's pesticide register. The register shall include the name and address of the private applicator and other information as prescribed by the department. The dealer shall keep a record of all restricted use pesticides distributed to a private applicator;

(2) the applicant shall obtain a user permit prior to purchase and use of the pesticide. The department may issue restricted use pesticide permits to private applicators who have documented the crops, location and acreage on the permit for the seasonal or temporary period for which their permit is issued. User permits shall only be issued for registered or experimental uses and shall be subject to other limitations as specified by the department. The limitations may include limiting the areas of use, the timing or method of application and limiting the amount of the pesticide to that needed to cover the acreage to be treated;

(3) the applicant shall be required to pass a written examination demonstrating his competency with respect to the use and handling of the pesticide or pesticides covered by his certification prior to purchase and use of the product; and

(4) the applicant shall be required to obtain approval from the department for each application involving a specific risk to the environment. The applicant shall submit to the department an application form for a special review permit. The application shall include detailed information on the intended use, the responsible person in charge and the equipment and conditions under which the pesticide application is to be made. The department in reviewing the application for a special review permit may require additional restrictions such as on-site inspection or supervision.

C. The department shall charge the prescribed fee for each certification.

D. If a private applicator does not qualify, the department shall inform the applicant in writing.

E. Private applicator certification shall be valid for a period of not less than three years, established by the board.

76-4-20.1. Noncommercial applicator license.

A. A noncommercial applicator shall not use a restricted use or state restricted use pesticide without having a valid current noncommercial applicator license issued by the department for the license use categories and subcategories in which the pesticide application is made.

B. Application for an original or renewal license shall be on a form prescribed by the department. An annual prescribed fee shall be charged for each noncommercial applicator license issued.

C. The department shall not issue a noncommercial applicator license until the applicant has passed a written certification examination to demonstrate to the department the applicant's knowledge of how to apply pesticides under the classifications for which the applicant has applied and the applicant's knowledge of the nature and effect of pesticides the applicant may apply under such classifications.

D. The department shall renew any applicant's license under the classification for which the applicant is certified; provided that the applicant's license is not under a suspension or revocation order and the applicant has complied with the provisions of the Pesticide Control Act.

E. Nothing in this section shall imply the right to apply pesticides for hire without first having obtained a commercial applicator license.

76-4-21. Expiration date of licenses.

The board shall set by regulation the expiration date for the annual pesticide registration or any license provided for in the Pesticide Control Act.

76-4-22. Fees.

A. Fees for the registration of pesticides, the various licenses, inspection of apparatuses and examination of applicants required by the Pesticide Control Act shall be set by the board not to exceed the amount authorized below:

- (1) annual registration fee for each pesticide or device registered, not more than \$150;
- (2) annual pesticide dealer license for each location or outlet within the state or, if there is no outlet in the state, for the principal out-of-state location or outlet, not more than \$100;
- (3) annual pest management consultant license, not more than \$100;
- (4) annual commercial pesticide applicator license, not more than \$100;
- (5) annual operator license, not more than />\$75.00;
- (6) annual noncommercial applicator license, not more than \$100;
- (7) private applicator certification or renewal, not more than \$25.00;
- (8) additional inspection required to certify each unit of aircraft, ground or manual equipment that fails to pass inspection, not more than \$25.00; and
- (9) examination fee for each examination needed to qualify the applicant as a pest management consultant, commercial pesticide applicator, noncommercial applicator or operator or any combination thereof, not more than />\$20.00.

B. If the application for the renewal of a pesticide registration or any annual license provided for in the Pesticide Control Act is not filed prior to the expiration date of the prior registration or license, the fee for renewal of registration or license shall be double the amount specified in this section and shall be paid by the applicant before the renewal registration or license is issued. Any person holding a current valid license may renew the license for the next year without taking an examination unless the department determines that additional knowledge relating to the classification for which the applicant has applied makes a new examination necessary. However, if the license is not renewed within thirty days after expiration, the licensee shall be required to take new certification examinations.

76-4-23. Grounds for denial, suspension or revocation of license, permit or certification; acts constituting a violation of the Pesticide Control Act.

A. The department may deny application for any license, permit or certification or may suspend any license, permit or certification when it has reason to believe that the applicant for or the holder of such license, permit or certification has violated any of the provisions of Subsection B of this section.

B. It is a violation of the Pesticide Control Act for any person to:

- (1) make a false or fraudulent claim through any media which misrepresents the effect of material or methods to be used;
- (2) make a pesticide recommendation or to use a pesticide in a manner inconsistent with the labeling;
- (3) apply known ineffective or improper materials;
- (4) operate faulty or unsafe apparatus;
- (5) operate in a faulty, careless or negligent manner;
- (6) refuse or, after notice, neglect to comply with the provisions of the Pesticide Control Act or the rules and regulations adopted pursuant thereto;
- (7) refuse or neglect to keep and maintain the records or to make reports when and as required by the Pesticide Control Act or rules and regulations adopted pursuant thereto;
- (8) make false or fraudulent records, invoices or reports;
- (9) engage in the business of applying a pesticide on the land of another without having a licensed applicator or operator in direct "on-the-job" supervision;
- (10) use fraud or misrepresentation in making an application for a license or renewal of a license;
- (11) refuse or neglect to comply with any limitation or restriction on or in a duly issued license or permit;
- (12) aid or abet a licensed or an unlicensed person to evade any provision of the Pesticide Control Act, conspire with a licensed or an unlicensed person to evade the provisions of the Pesticide Control Act or allow one's license to be used by an unlicensed person;
- (13) make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
- (14) impersonate any state, county or city inspector or official;
- (15) perform the type of pest control under the conditions and in the locality in which he operates or has operated, whether or not he has previously passed an examination, when not qualified;
- (16) use, or supervise the use of, a pesticide which is restricted to use by certified applicators when not qualified as a certified applicator; or

(17) make pesticide recommendations or apply pesticides without having the proper certification or license.

C. Any person who has had a license, permit or certification denied, suspended or revoked by the department may request a hearing before the department. The request for a hearing shall be made within fifteen days of receipt of a certified letter notifying him of the department's action.

76-4-24. Surety bond or insurance required of commercial pesticide applicators.

The department shall not issue a commercial pesticide applicator license until the applicant has furnished evidence of financial responsibility with the department consisting either of a surety bond or a liability insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of the operations of the applicant. However, the surety bond or liability insurance policy need not apply to damages or injury to land being worked upon by the applicant. The department shall not accept a surety bond or liability insurance policy except from authorized insurers or surplus line brokers authorized to do business in the state.

A. The amount of the surety bond or liability insurance as provided for in this section shall be set by the board. The surety bond or liability insurance shall be maintained, at a sum not less than that specified by the board, at all times during the license period. The department shall be notified ten days prior to any reduction made at the request of the applicant or cancellation of the surety bond or liability insurance by the surety or insurer. The department may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount prescribed by the board. If the applicant has not satisfied the requirements of the deductible amount in any prior legal claim, such deductible clause shall not be accepted by the department unless the applicant furnishes the department with a surety bond or liability insurance which shall satisfy the amount of the deductible pertaining to all claims that may arise in his application of pesticides.

B. The applicator license shall, whenever the surety bond or insurance policy of the licensee is reduced below the requirements of the Pesticide Control Act and regulations adopted pursuant thereto, be automatically suspended until the surety bond or insurance policy again meets these requirements. The department may retrieve the license plates or decal of the licensee during the period of automatic suspension and return them only when the licensee has furnished the department with written proof that he is again in compliance.

C. Nothing in the Pesticide Control Act shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides, even though such use conforms to the rules and regulations of the board.

76-4-25. Damaged person must file report of loss; contents; time of filing; effect of failure to file.

A. Any person suffering a loss or damage resulting from the use or application by others of any pesticide shall file with the department a verified report of loss setting forth, so far as known to the claimant, the following:

- (1) the name and address of the claimant;
- (2) the type of land alleged to be injured or damaged;
- (3) the name of the person applying the pesticide and allegedly responsible;
- (4) the name of the owner or occupant of the property for whom the pesticide application was made;

and

- (5) additional information as requested by the department.

B. The report must be filed within sixty days from the time that the loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report must be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known. The department may prepare a form to be furnished to persons making a report of alleged damages. This form shall contain other requirements as the department deems necessary. The department may, upon receipt of the alleged damage report, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility, of the damages claimed, and furnish copies of the statements as may be requested. The department shall inspect damages whenever possible, and when they determine that the complaint has sufficient merit, they shall make the information available to the person claiming damage and to the person who is alleged to have caused the damage.

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

D. The failure to file the report shall not be a violation of this act. However, if the person failing to file the report is the only one injured from the use or application of a pesticide by others, the department may, when in the public

interest, refuse to hold a hearing for the denial, suspension or revocation of a license or permit issued under the Pesticide Control Act until the report is filed.

E. Where damage is alleged to have occurred, the claimant shall permit the department, the licensee and his representatives, such as bondsman or insurer, to observe and examine the lands or nontarget organism alleged to have been damaged. Failure of the claimant to permit the observation and examination of the damaged lands shall automatically bar the claim against the licensee.

76-4-26. Inspection of equipment.

A. The department shall provide for an annual inspection of any equipment used for the application of pesticides by a commercial pesticide applicator and may require repairs or other changes before the equipment is used to apply pesticides. A list of requirements that the equipment shall meet shall be provided by the department.

B. Any piece of equipment which fails inspection shall have affixed to it an out-of-order seal. The equipment shall not be put back into service until it has passed reinspection and the out-of-order seal is removed by the department. A prescribed inspection fee shall be charged for each reinspection.

76-4-27. License plates or decals for apparatus.

Each licensed apparatus shall be identified by a license plate or decal furnished by the department, at no cost to the licensee. The license plate or decal shall be affixed in a location and manner upon the application apparatus as prescribed by the department.

76-4-28. Farmer or rancher exemption.

Except for the use of restricted use pesticides the provisions of the Pesticide Control Act relating to licenses and requirements for their issuance shall not apply to any farmer or rancher owner of a ground or manual apparatus applying pesticides for himself or his farmer or rancher neighbors, when he:

A. operates farm or ranch property and operates and maintains pesticide application equipment primarily for his own use;

B. is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and he does not publicly solicit business as a pesticide applicator; or

C. operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his neighbors.

76-4-29. Repealed.

76-4-30. Discarding and storing of pesticides and pesticide containers.

No person shall discard, transport or distribute any pesticide or pesticide container in a manner that may cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or pollute any waterway.

76-4-31. Access to public or private premises.

A. For the purpose of carrying out the provisions of the Pesticide Control Act, the department is authorized upon presentation of proper identification and with consent of the owner or by court order, to enter any public or private premises, in order to:

- (1) inspect any apparatus subject to the Pesticide Control Act and the premises on which the apparatus is kept or stored;
- (2) inspect lands actually or reported to be exposed to pesticides;
- (3) inspect storage or disposal areas;
- (4) inspect or investigate complaints of injury to humans or land;
- (5) sample pesticides being applied or to be applied; or
- (6) sample land, including agricultural products, for pesticide residues.

B. If it appears that a pesticide apparatus or device fails to comply with the provisions of the Pesticide Control Act or regulations adopted thereunder, and if the department contemplates instituting proceedings against any person, the department shall cause notice to be given to the person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter, in the opinion of the department, it appears that the provisions of the Pesticide Control Act or regulations adopted thereunder have been

violated by the person, the department shall refer a copy of the results of the analysis or the examination of the pesticide apparatus or device to the district attorney for the county in which the violation occurred. It is the duty of the district attorney to whom any violation of the Pesticide Control Act is reported to cause appropriate proceedings to be instituted and prosecute in a court of competent jurisdiction without delay.

C. Nothing in the Pesticide Control Act shall be construed as requiring the department to report, for prosecution or the institution of condemnation proceedings, minor violations of the Pesticide Control Act when the department believes that the public interest will be best served by a notice of warning in writing.

D. Should the department be denied access to any land where access was sought for the purposes set forth in the Pesticide Control Act, they may apply to any court of competent jurisdiction for a search warrant for the purpose requested.

76-4-32. Classification of licenses.

A. The department may classify licenses to be issued under the Pesticide Control Act. Such classifications may include recommending pesticides to be used in or on land, including but not limited to agricultural crops, ornamentals, structures and noncrop land or to treat regulated products or equipment. If the licensee has a classified license, he shall be limited to practicing within such classification. Each classification shall be subject to separate testing procedures and requirements. No person shall be required to pay an additional license fee if he desires to be licensed in one or all of the license classifications.

B. The department may classify pesticide applicator and operator licenses to be issued under the Pesticide Control Act. The classifications may include, but not be limited to pest control operations, fumigators, ornamental or agricultural pesticide applicators or right-of-way pesticide applicators. Separate classifications may be specified for ground, aerial or manual methods used by any licensee to apply pesticides or to the use of pesticides to control pests. Each classification shall be subject to separate testing procedures and requirements. No person shall be required to pay an additional license fee if the person desires to be licensed in one or all of the license classifications.

76-4-33. Records.

A. Any person issued a license or permit under the provisions of the Pesticide Control Act shall keep such records as required by regulation of the board.

B. Commercial pesticide applicators licensed under the provisions of the Pesticide Control Act shall keep such records as prescribed by regulation of the board.

C. The department shall have access to the records at any reasonable time to copy or make copies of the records for the purpose of carrying out the provisions of the Pesticide Control Act. Unless required for the enforcement of the Pesticide Control Act, the information shall be confidential and, if summarized, shall not identify any individual person.

76-4-34. Penalties.

A. Any person violating any provision or requirement of the Pesticide Control Act or regulations adopted by the board pursuant to that act is guilty of a petty misdemeanor.

B. In addition to any other penalties imposed by the Pesticide Control Act, any person who willfully or repeatedly violates any provision of that act may be assessed by the court a civil penalty not to exceed one thousand dollars (\$1,000) for each violation.

C. The board may bring an action to enjoin the violation or threatened violation of any provision of the Pesticide Control Act or any regulation made pursuant thereto in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

D. The department, acting as a law enforcement officer, is authorized to file a criminal complaint in a magistrate court for violations of the Pesticide Control Act or regulations adopted pursuant thereto and shall not be required to pay the docket fee.

76-4-35. Persons exempted from certain penalties.

A. The penalties provided for violations of Paragraphs (1) through (5) of Subsection A of Section 5 [76-4-5 NMSA 1978] of the Pesticide Control Act shall not apply to:

(1) any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the department to copy all records showing the transactions in and movement of the pesticides or devices;

(2) public officials of this state and the federal government while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations or while engaged in pesticide research; or

(3) the manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides if the manufacturer or shipper holds a valid experimental use permit issued by the department and by the United States environmental protection agency.

B. No pesticide or device shall be deemed in violation of the Pesticide Control Act when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of the Pesticide Control Act and regulations adopted thereunder shall apply.

76-4-36. Repealed.

76-4-37. Publication of information.

The department may publish, in the form it deems proper, results of products analyzed, based on official samples as compared with the guaranteed analysis and information concerning the distribution and use of pesticides. Individual distribution and use information shall not be a public record. The department may also publish results of samples analyzed for pesticide residues.

76-4-38. Cooperation.

The department may cooperate, receive grants-in-aid and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, in order to:

- A. secure uniformity of regulations;
- B. enter into cooperative agreements with the United States environmental protection agency to register pesticides under the authority of the Pesticide Control Act and the federal Environmental Pesticide Control Act;
- C. cooperate in the enforcement of the federal Environmental Pesticide Control Act and regulations through the use of state or federal personnel and facilities or both and to implement cooperative enforcement programs including but not limited to the registration of pesticides, collection and analysis of pesticides and devices, inspection of storage facilities and certification of applicators;
- D. enter into contracts with other agencies including federal agencies for the purpose of training pesticide dealers, pesticide management consultants, pesticide applicators or operators;
- E. publish information and conduct short courses on the storage, transportation, distribution, application, use, registration and disposal of pesticides and devices and environmental implications thereof;
- F. enter into contracts for either monitoring pesticides, or analyzing land, including agricultural products that will be consumed by any living organism other than plants, for pesticide residues, or both;
- G. prepare and submit a state plan to meet federal certification standards including issuing experimental use permits; and
- H. regulate pesticide applicators and operators.

76-4-39. Disposition of funds.

All moneys received by the department under the provisions of the Pesticide Control Act shall be expended for the purpose of carrying out the provisions of the Pesticide Control Act.