Enrolled

Senate Bill 106

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

CHAPTER.....

AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Private applicator" means a person who uses or supervises the

use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person, including governmental employes, who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device

used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.

(c) One member shall represent the Health Division of the Department of Human Resources.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such

activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides by a licensed pesticide applicator or certified private applicator or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator or a certified private applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant or applicator and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant or applicator shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise

demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

SECTION 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the license fee shall be established by the department not to exceed $40 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $15 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class shall be established by the department not to exceed $20.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages

or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his financial responsibility for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall

be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee to be established by the department not to exceed $10, by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection (12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee shall be established by the department not to exceed $15 for the first class of pest control or pesticide application business as prescribed

in subsection (2) of section 32 of this 1973 Act and not to exceed $7.50 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class shall be established by the department not to exceed $12.50.

(5) Examinations or reexaminations for pesticide applicators' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 18. (1) The annual license fee for a pesticide consultant shall be established by the department not to exceed $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators or operators.

SECTION 19. (1) The annual license fee for a pesticide dealer shall be established by the department not to exceed $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

SECTION 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Except as otherwise provided in section 15 of this 1973 Act:

(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides with power driven application equipment or devices under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer or forest land owner applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property

or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of the effective date of this 1973 Act, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area;

(C) Employ, as deemed necessary, persons to assist the area committee in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section.

The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pesticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regulations of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.

SECTION 29. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a pro-

tected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183, the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

Note: Subsection (5) was deleted by amendment.

(6) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants or applicator and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to

assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(15) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

SECTION 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

Note: Subsection (9) was deleted by amendment.

(10) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by him without first obtaining and maintaining a private applicator certificate.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due the department prior to the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction,

by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

Chapter , Oregon Laws 1973

ENROLLED

Senate Bill 106

Passed by Senate March 16, 1973

Repassed by Senate June 23, 1973

Secretary of Senate

President of Senate

Passed by House June 20, 1973

~~Repassed by House~~

Speaker of House

Received by Executive Department:

..... M., ..., 1973.

Approved: , 1973.

Governor

Filed in Office of Secretary of State:

..... M., ..., 1973.

Secretary of State

Committee Report Review – Engrossed and Enrolled Bills Unit

Date June 12, 1973

We have examined the report of the House Committee on Agriculture & Natural Resources, dated June 12, 1973, on measure Re-Engrossed SB 106, and, pursuant to House Rule 8.20(2), attest that the measure in the form reported out is accurate in form and style according to the **Form and Style Manual for Legislative Measures.**

Charlotte Nelson

For Engrossed and Enrolled Bills Unit

(signature)

HCR 73-4

NC

OREGON LEGISLATIVE ASSEMBLY—1973 REGULAR SESSION

ENROLLED

~~ENG. RE-ENGROSSED~~

Senate Bill 106

~~Ordered by the House June 15~~
~~(Including Amendments by Senate March 13 and by House Committee on Agriculture and Natural Resources May 25 and June 12)~~

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
~~(at the request of the State Department of Agriculture)~~

CHAPTER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises provisions relating to application, registration, control and use of pesticides in this state. Declares purpose to regulate in public interest formulation, distribution, storage, transportation, application and use of pesticides.

Creates Committee on Synthetic Chemicals in Environment to provide advisory information to Department of Agriculture and other state agencies in evaluation of use and disposition of pesticides and other synthetic chemicals. Provides for composition, term, compensation and chairman of committee.

Requires classification, registration, labeling and food tolerances of pesticides, and exemptions thereto. Provides for licensing of pesticide consultants, dealers, operators, applicators and private applicators, as well as certification of pesticide applicator trainees, and exemptions thereto. Authorizes Department of Agriculture to conduct consultant, applicator, and trainee examinations, reexaminations and educational courses and requires record keeping of pesticide operators. Authorizes establishment by department of protected and restricted areas wherein pesticide application is controlled, and procedures therefor. Provides for departmental authority to investigate losses from commercial pesticide application, as well as authority to administer Act and promulgate regulations. Designates prohibited acts and conditions for seizure of pesticides. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

~~A BILL FOR~~ AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Private applicator" means a person who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person, including governmental employes, who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage

of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.

(c) One member shall represent the Health Division of the Department of Human Resources.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for

the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is

intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in

which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides by a licensed pesticide applicator or certified private applicator or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator or a certified private applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except

upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant or applicator and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant or applicator shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

SECTION 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the license fee shall be established by the department not to exceed $40 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $15 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class shall be established by the department not to exceed $20.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages

or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his financial responsibility for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such

action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee to be established by the department not to exceed $10, by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner,

under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection (12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee shall be established by the department not to exceed $15 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $7.50 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class shall be established by the department not to exceed $12.50.

(5) Examinations or reexaminations for pesticide applicators' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the

examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 18. (1) The annual license fee for a pesticide consultant shall be established by the department not to exceed $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to

and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators or operators.

SECTION 19. (1) The annual license fee for a pesticide dealer shall be established by the department not to exceed $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

SECTION 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Except as otherwise provided in section 15 of this 1973 Act:

(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides with power driven application equipment or devices under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer or forest land owner applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged

to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the

department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of the effective date of this 1973 Act, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and

at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) Employ, as deemed necessary, persons to assist the area committee

in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pesticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regula-

tions of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include

one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.

SECTION 29. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy

and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183, the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in

federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

Note: Subsection (5) was deleted by amendment.

(6) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants or applicator and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(15) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the

provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

SECTION 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend,

suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest

products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

Note: Subsection (9) was deleted by amendment.

(10) As a pesticide operator, engage in the business of, or represent

or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by him without first obtaining and maintaining a private applicator certificate.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due the department prior to the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

Committee Report Review – Legislative Counsel

Date June 12, 1973

We have examined the report of the House Committee on Agriculture & Natural Resources, dated June 12, 1973, on measure Re-Engrossed SB 106, and, pursuant to House Rule 8.20(2), attest that the revised bill summary complies with the requirements of House Rule 14.15(4) and that the identification of substantive changes in the report is accurate.

Charles W. Wilson
For Legislative Counsel

☐ MEASURE HAS NO REVISED SUMMARY.

☐ MEASURE HAS NO SUBSTANTIVE CHANGES.

Margaret L. Dack
Committee Clerk Margaret L. Dack

HCR 73-3

RE-ENGROSSED

Senate Bill 106

Ordered by the House
(Including Amendments by Senate March 13 and by House Committee on Agriculture and Natural Resources May 25)

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES (at the request of the State Department of Agriculture)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises provisions relating to application, registration, control and use of pesticides in this state. Declares purpose to regulate in public interest formulation, distribution, storage, transportation, application and use of pesticides.

Creates Committee on Synthetic Chemicals in Environment to provide advisory information to Department of Agriculture and other state agencies in evaluation of use and disposition of pesticides and other synthetic chemicals. Provides for composition, term, compensation and chairman of committee.

Requires classification, registration, labeling and food tolerances of pesticides, and exemptions thereto. Provides for licensing of pesticide consultants, dealers, operators, applicators and private applicators, as well as certification of pesticide applicator trainees, and exemptions thereto. Authorizes Department of Agriculture to conduct consultant, applicator, and trainee examinations, reexaminations and educational courses and requires record keeping of pesticide operators. Authorizes establishment by department of protected and restricted areas wherein pesticide application is controlled, and procedures therefor. Provides for departmental authority to investigate losses from commercial pesticide application, as well as authority to administer Act and promulgate regulations. Designates prohibited acts and conditions for seizure of pesticides. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

A BILL FOR AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Private applicator" means a person who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person, including governmental employes, who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage

of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.

(c) One member shall represent the Health Division of the Department of Human Resources.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for

the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is

intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in

which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides by a licensed pesticide applicator or certified private applicator or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator or a certified private applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the license fee shall be established by the department not to exceed $40 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $15 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class shall be established by the department not to exceed $20.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages

or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his financial responsibility for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such

action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee to be established by the department not to exceed $10, by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner,

under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection (12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee shall be established by the department not to exceed $15 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $7.50 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class shall be established by the department not to exceed $12.50.

(5) Examinations or reexaminations for pesticide applicators' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the

examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 18. (1) The annual license fee for a pesticide consultant shall be established by the department not to exceed $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to

and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators or operators.

SECTION 19. (1) The annual license fee for a pesticide dealer shall be established by the department not to exceed $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

SECTION 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Except as otherwise provided in section 15 of this 1973 Act:

(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides with power driven application equipment or devices under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer or forest land owner applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged

to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the

department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of the effective date of this 1973 Act, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and

at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) Employ, as deemed necessary, persons to assist the area committee

in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pesticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regula-

tions of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include

one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.

SECTION 29. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 or more landowners, representing at least ~~or the owners of more than~~ 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy

and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforceability of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183, the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in

federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

Note: Subsection (5) was deleted by amendment.

(6) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants or applicator and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(15) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the

provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

SECTION 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend,

suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest

products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

Note: Subsection (9) was deleted by amendment.

(10) As a pesticide operator, engage in the business of, or represent

or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by him without first obtaining and maintaining a private applicator certificate.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due the department prior to the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

RE-ENGROSSED

Senate Bill 106

Ordered by the House
(Including Amendments by Senate March 13 and by House Committee on Agriculture and Natural Resources May 25)

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
(at the request of the State Department of Agriculture)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

No change

Revises provisions relating to application, registration, control and use of pesticides in this state. Declares purpose to regulate in public interest formulation, distribution, storage, transportation, application and use of pesticides.

Creates Committee on Synthetic Chemicals in Environment to provide advisory information to Department of Agriculture and other state agencies in evaluation of use and disposition of pesticides and other synthetic chemicals. Provides for composition, term, compensation and chairman of committee.

Requires classification, registration, labeling and food tolerances of pesticides, and exemptions thereto. Provides for licensing of pesticide consultants, dealers, operators, applicators and private applicators, as well as certification of pesticide applicator trainees, and exemptions thereto. Authorizes Department of Agriculture to conduct consultant, applicator, and trainee examinations, reexaminations and educational courses and requires record keeping of pesticide operators. Authorizes establishment by department of protected and restricted areas wherein pesticide application is controlled, and procedures therefor. Provides for departmental authority to investigate losses from commercial pesticide application, as well as authority to administer Act and promulgate regulations. Designates prohibited acts and conditions for seizure of pesticides. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

A BILL FOR AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Private applicator" means a person who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person, including governmental employes, who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage

of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.

(c) One member shall represent the Health Division of the Department of Human Resources.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for

the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is

intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in

which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides by a licensed pesticide applicator or certified private applicator or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator or a certified private applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except

upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant or applicator and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant or applicator shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

SECTION 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the license fee shall be established by the department not to exceed $40 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $15 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class shall be established by the department not to exceed $20.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages

or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his financial responsibility for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such

action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee to be established by the department not to exceed $10, by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner,

under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection (12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee shall be established by the department not to exceed $15 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $7.50 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class shall be established by the department not to exceed $12.50.

(5) Examinations or reexaminations for pesticide applicators' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the

examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 18. (1) The annual license fee for a pesticide consultant shall be established by the department not to exceed $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to

and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators or operators.

SECTION 19. (1) The annual license fee for a pesticide dealer shall be established by the department not to exceed $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

SECTION 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Except as otherwise provided in section 15 of this 1973 Act:

(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides with power driven application equipment or devices under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer or forest land owner applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged

to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the

department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of the effective date of this 1973 Act, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and

at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) Employ, as deemed necessary, persons to assist the area committee

in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pesticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regula-

tions of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include

one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.

SECTION 29. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 landowners, ~~or the owners of more than~~ 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy

and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183, the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in

federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

Note: Subsection (5) was deleted by amendment.

(6) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants or applicator and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(15) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the

provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

SECTION 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend,

suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest

products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

Note: Subsection (9) was deleted by amendment.

(10) As a pesticide operator, engage in the business of, or represent

or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by him without first obtaining and maintaining a private applicator certificate.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due the department prior to the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

ENG.-RE-ENGROSSED

Senate Bill 106

Ordered by the House June 15
(Including Amendments by Senate March 13 and by House Committee on Agriculture and Natural Resources May 25 and June 12)

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
(at the request of the State Department of Agriculture)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises provisions relating to application, registration, control and use of pesticides in this state. Declares purpose to regulate in public interest formulation, distribution, storage, transportation, application and use of pesticides.

Creates Committee on Synthetic Chemicals in Environment to provide advisory information to Department of Agriculture and other state agencies in evaluation of use and disposition of pesticides and other synthetic chemicals. Provides for composition, term, compensation and chairman of committee.

Requires classification, registration, labeling and food tolerances of pesticides, and exemptions thereto. Provides for licensing of pesticide consultants, dealers, operators, applicators and private applicators, as well as certification of pesticide applicator trainees, and exemptions thereto. Authorizes Department of Agriculture to conduct consultant, applicator, and trainee examinations, reexaminations and educational courses and requires record keeping of pesticide operators. Authorizes establishment by department of protected and restricted areas wherein pesticide application is controlled, and procedures therefor. Provides for departmental authority to investigate losses from commercial pesticide application, as well as authority to administer Act and promulgate regulations. Designates prohibited acts and conditions for seizure of pesticides. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

A BILL FOR AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Private applicator" means a person who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person, including governmental employes, who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage

of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.

(c) One member shall represent the Health Division of the Department of Human Resources.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for

the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is

intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in

which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides by a licensed pesticide applicator or certified private applicator or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator or a certified private applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except

upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant or applicator and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant or applicator shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

SECTION 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the license fee shall be established by the department not to exceed $40 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $15 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class shall be established by the department not to exceed $20.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages

or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his financial responsibility for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such

action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee to be established by the department not to exceed $10, by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner,

under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection (12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee shall be established by the department not to exceed $15 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $7.50 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class shall be established by the department not to exceed $12.50.

(5) Examinations or reexaminations for pesticide applicators' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the

examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 18. (1) The annual license fee for a pesticide consultant shall be established by the department not to exceed $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to

and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators or operators.

SECTION 19. (1) The annual license fee for a pesticide dealer shall be established by the department not to exceed $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

SECTION 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Except as otherwise provided in section 15 of this 1973 Act:

(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides with power driven application equipment or devices under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer or forest land owner applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged

to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the

department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of the effective date of this 1973 Act, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and

at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) Employ, as deemed necessary, persons to assist the area committee

in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pesticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regula-

tions of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include

one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.

SECTION 29. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy

and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183, the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in

federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

Note: Subsection (5) was deleted by amendment.

(6) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

when certain crops are or have been harvested.

ed or limited use of various types or classes of pesticides.

ities of injury or death to persons and loss or damage to property.

the conditions and amounts allowed for deductible classes insurance required by section 15 of this 1973 Act.

h and maintain programs of instruction or educational icide consultants, operators, applicators and private appli- ration with Oregon State University or others, wherein, as able, provisions are made so as to allow such pesticide oper- icators to participate only in the instruction or courses di- ctly related to their particular activities. Attendance of e required.

re and distribute a manual, or other form of publication, rmation helpful and beneficial to persons engaged in pesti- n or use or to persons preparing to qualify for licensing as rator, consultants or applicator and establish charges there-

blish, from time to time, advisory groups or committees to partment in formulation of policies, plans or regulations under . Each member of any such group or committee so established ed to compensation and expenses as provided in ORS 292.495, charged to the department.

lish registration fees for pesticide brands and formulae or hereunder.

lish restrictions or prohibitions as to the form of pesticides mixed, applied or added to fertilizers, seed or grains.

lish restrictions, methods and procedures in the storage, use or application of restricted-use pesticides or highly in order to protect humans, pollinating insects, bees, ani- ldlife, land or environment.

(15) lish and maintain a system for certification of private ap- plicators is regard, the department shall take into consideration:

(a) nd regulations of the Federal Government, including the

provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

SECTION 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend,

suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest

products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

Note: Subsection (9) was deleted by amendment.

(10) As a pesticide operator, engage in the business of, or represent

or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by him without first obtaining and maintaining a private applicator certificate.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due the department prior to the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 (1971 Replacement Part) and 634 (1971 Replacement Part) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

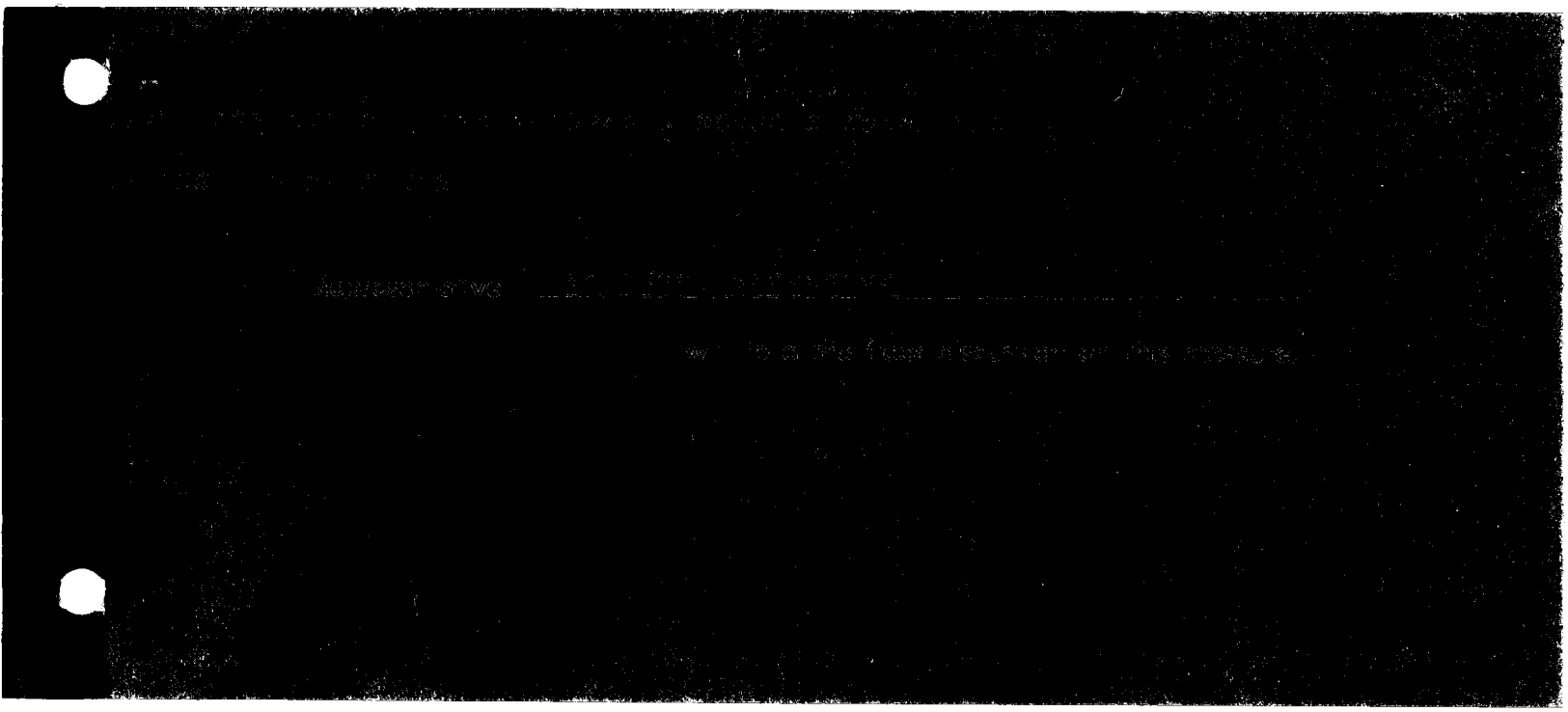
Committee Report Review – Engrossed and Enrolled Bills Unit

Date May 25, 1973

We have examined the report of the House Committee on Agriculture & Natural Resources, dated May 25, 1973, on measure SB 106, and, pursuant to House Rule 8.20(2), attest that the measure in the form reported out is accurate in form and style according to the **Form and Style Manual for Legislative Measures.**

For Engrossed and Enrolled Bills Unit

HCR 73-4



Committee Report Review – Legislative Counsel

Date May 25, 1973

We have examined the report of the House Committee on Agriculture & Natural Resources, dated May 25, 1973, on measure SB 106, and, pursuant to House Rule 8.20(2), attest that the revised bill summary complies with the requirements of House Rule 14.15(4) and that the identification of substantive changes in the report is accurate.

Charles W. Wilson
For Legislative Counsel

☐ MEASURE HAS NO REVISED SUMMARY.

☐ MEASURE HAS NO SUBSTANTIVE CHANGES.

Margaret L. Dack
Committee Clerk / Margaret L. Dack

HCR 73-3

HOUSE COMMITTEE REPORT

Re-Engrossed SB 106

COMMITTEE ON Agriculture and Natural Resources **DATED** June 12, 1973

Mr. Speaker: The committee on Agriculture and Natural Resources to whom was referred Re-Engrossed SB 106, having had the same under consideration, respectfully reports it back with the recommendation:

- ☐ that the bill do pass.
- ☒ that the bill do pass as amended.
- ☐ that the bill be now referred to the Committee on _____

_____ (according to prior reference)

☐ _____

IDENTIFICATION OF SUBSTANTIVE AMENDMENTS BY THE COMMITTEE:

Provided that 25 "or more" landowners "representing at least" 70 percent of the land acreage, may present a petition to consolidate adjacent protected areas in order to declare a quarantine area.

EXPLANATION OF THE BILL:

SB 106 would revise the provisions relating to the application, registration, control and use of pesticides in Oregon. It would create a Committee on Synthetic Chemicals in Environment to provide advisory information to the Department of Agriculture for the evaluation of use and disposition of pesticides and other synthetic chemicals. It would require classification, registration, labeling and food tolerances of pesticides and exemptions. It provides for the licensing of pesticide consultants, dealers, operators, applicators and private applicators, as well as the certification of pesticide applicator trainees.

ATTACHMENTS

- ☐ Engrossed bill
- ☐ Attested by E & E
- ☐ Attested by Leg. Counsel

Bud Byers

Chairman Bernard "Bud" D. Byers

Date: June 12, 1973

Rep. Stevenson will carry the bill

HCR 73-1

HOUSE AMENDMENTS

TO Re-Engrossed SB 106

COMMITTEE ON Agriculture and Natural Resources

Committee Report dated June 12, 1973 Date(s) of Committee Action: June 12, 1973

On page 30 of the printed re-engrossed bill, line 12, after "25" insert "or more", and in the same line delete "or the owners" and insert "representing at least".

In line 13, delete "of more than".

Margaret L. Dack

Committee Clerk Margaret L. Dack

HOUSE COMMITTEE REPORT

SB 106

COMMITTEE ON Agriculture and Natural Resources **DATED** May 25, 1973

Mr. Speaker: The committee on Agriculture and Natural Resources **to whom was referred** SB 106, **having had the same under consideration, respectfully reports it back with the recommendation:**

- ☐ **that the bill do pass.**
- ☒ **that the bill do pass as amended.**
- ☐ **that the bill be now referred to the Committee on** _____

_____ **(according to prior reference)**

- ☐ _____

IDENTIFICATION OF SUBSTANTIVE AMENDMENTS BY THE COMMITTEE:

Modifies pesticide application license and certificate exemption to apply to those assisting licensed or certified applicators when the actual application is done by a licensed or certified person.

Modifies prohibition against use of application equipment to require license or certificate for such use. Exempts from prohibition operation of vehicular equipment under supervision of certified applicator.

EXPLANATION OF THE BILL:

SB 106 revises the provisions relating to the application, registration, control and use of pesticides in Oregon. It would create a Committee on Synthetic Chemicals in Environment to provide advisory information to the Department of Agriculture in the evaluation of use and disposition of pesticides and other synthetic chemicals. It requires the classification, registration, labeling and food tolerances of pesticides. It provides for the licensing of pesticide consultants, dealers, operators, applicators and private applicators.

ATTACHMENTS

- ☐ Engrossed bill
- ☐ Attested by E & E
- ☐ Attested by Leg. Counsel

Bud D. Byers

Chairman Bernard "Bud" D. Byers

Date: May 25, 1973

Rep. Stevenson will carry bill.

HCR 73-1

HOUSE AMENDMENTS

TO SB 106

COMMITTEE ON Agriculture & Natural Resources

Committee Report dated May 25, 1973 Date(s) of Committee Action: May 25, 1973

On page 12 of the printed engrossed bill, line 20, after "pesticides", insert "by a licensed pesticide applicator or certified private applicator".

In line 23, delete the semicolon and after "or" insert "a certified private applicator; or".

On page 36, line 21, after "applicator" insert "or certified private applicator".

In line 22, after the period, insert "This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.".

Margaret L. Dack

Committee Clerk Margaret L. Dack

ENGROSSED

Senate Bill 106

Ordered by the Senate March 13
(Including Amendments by Senate March 13)

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
(at the request of the State Department of Agriculture)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises provisions relating to application, registration, control and use of pesticides in this state. Declares purpose to regulate in public interest formulation, distribution, storage, transportation, application and use of pesticides.

Creates Committee on Synthetic Chemicals in Environment to provide advisory information to Department of Agriculture and other state agencies in evaluation of use and disposition of pesticides and other synthetic chemicals. Provides for composition, term, compensation and chairman of committee.

Requires classification, registration, labeling and food tolerances of pesticides, and exemptions thereto. Provides for licensing of pesticide consultants, dealers, operators, applicators and [*farmer*] **private** applicators, as well as certification of pesticide applicator trainees, and exemptions thereto. Authorizes Department of Agriculture to conduct consultant, applicator, [*farmer applicator*] and trainee examinations, reexaminations and educational courses and requires record keeping of pesticide operators. Authorizes establishment by department of protected and restricted areas wherein pesticide application is controlled, and procedures therefor. Provides for departmental authority to investigate losses from commercial pesticide application, as well as authority to administer Act and promulgate regulations. Designates prohibited acts and conditions for seizure of pesticides. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION .**

A BILL FOR AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesti-

cides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Private applicator" means a person who uses or supervises the use of ~~any~~ pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of sub-

stances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person, including governmental employes, who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage

of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.

(c) One member shall represent the Health Division of the Department of Human Resources.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for

the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is intended for use on vegetation and contains any substance which is injuri-

ous to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in which a pesticide is contained, all applicable provisions of this chapter

must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, by a licensed pesticide applicator or certified private applicator helping or assisting in the application of pesticides or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator or a certified private applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid

plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant or applicator and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant or applicator shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

SECTION 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the

license fee shall be established by the department not to exceed $40 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $15 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class shall be established by the department not to exceed $20.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of

controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his financial responsibilitity for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the depart-

ment, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee to be established by the department not to exceed $10, by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection

(12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and

protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee shall be established by the department not to exceed $15 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $7.50 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class shall be established by the department not to exceed $12.50.

(5) Examinations or reexaminations for pesticide applicators' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 18. (1) The annual license fee for a pesticide consultant shall be established by the department not to exceed $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the appli-

cant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators or operators.

SECTION 19. (1) The annual license fee for a pesticide dealer shall be established by the department not to exceed $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

SECTION 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Except as otherwise provided in section 15 of this 1973 Act:

(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides with power driven application equipment or devices under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides

on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer or forest land owner applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the

use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State

of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of the effective date of this 1973 Act, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be

maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. All legal voters within the boundaries of the territory as determined by the department are

eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) Employ, as deemed necessary, persons to assist the area committee in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pesticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regulations of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected

area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.

SECTION 29. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated

within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 landowners, or the owners of more than 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with

the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183, the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application ~~businesses~~ businesses in order to facilitate the licensing or certification and regulation of pesticide con-

sultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

Note: Subsection (5) was deleted by amendment.

(6) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants or applicator and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(15) Establish and maintain a system for certification of private applicators. In this regard, the department ~~may~~ take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

SECTION 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and

proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of

agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator performing the actual application, or supervising such application if such is performed by a. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) Apply pesticides which are not specifically authorized by such license.

Note: Subsection (9) was deleted by amendment.

(10) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person

to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by him without first obtaining and maintaining a private applicator certificate.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which

the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due the department prior to the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 and 634 (1971 Replacement Parts) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

FROM THE DESK OF
FRED J. MOHR
CHIEF CLERK

ROOM 210
STATE CAPITOL BUILDING

Committee Clerk,

Please note amendment on p. 34. This was approved by Senate but missed by printer in engrossed.

Fred Mohr

ENGROSSED

Senate Bill 106

Ordered by the Senate March 13
(Including Amendments by Senate March 13)

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
(at the request of the State Department of Agriculture)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises provisions relating to application, registration, control and use of pesticides in this state. Declares purpose to regulate in public interest formulation, distribution, storage, transportation, application and use of pesticides.

Creates Committee on Synthetic Chemicals in Environment to provide advisory information to Department of Agriculture and other state agencies in evaluation of use and disposition of pesticides and other synthetic chemicals. Provides for composition, term, compensation and chairman of committee.

Requires classification, registration, labeling and food tolerances of pesticides, and exemptions thereto. Provides for licensing of pesticide consultants, dealers, operators, applicators and [*farmer*] **private** applicators, as well as certification of pesticide applicator trainees, and exemptions thereto. Authorizes Department of Agriculture to conduct consultant, applicator, [*farmer applicator*] and trainee examinations, reexaminations and educational courses and requires record keeping of pesticide operators. Authorizes establishment by department of protected and restricted areas wherein pesticide application is controlled, and procedures therefor. Provides for departmental authority to investigate losses from commercial pesticide application, as well as authority to administer Act and promulgate regulations. Designates prohibited acts and conditions for seizure of pesticides. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

A BILL FOR AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesti-

cides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Private applicator" means a person who uses or supervises the use of ~~any~~ pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of sub-

stances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person, including governmental employes, who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage

of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.

(c) One member shall represent the Health Division of the Department of Human Resources.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for

the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is intended for use on vegetation and contains any substance which is injuri-

ous to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in which a pesticide is contained, all applicable provisions of this chapter

must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid

plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant or applicator and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant or applicator shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

SECTION 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the

license fee shall be established by the department not to exceed $40 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $15 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class shall be established by the department not to exceed $20.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of

controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his financial responsibilitity for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the depart-

ment, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee to be established by the department not to exceed $10, by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection

(12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and

protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee shall be established by the department not to exceed $15 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and not to exceed $7.50 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class shall be established by the department not to exceed $12.50.

(5) Examinations or reexaminations for pesticide applicators' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 18. (1) The annual license fee for a pesticide consultant shall be established by the department not to exceed $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the appli-

cant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators or operators.

SECTION 19. (1) The annual license fee for a pesticide dealer shall be established by the department not to exceed $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

SECTION 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Except as otherwise provided in section 15 of this 1973 Act:

(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides with power driven application equipment or devices under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides

on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer or forest land owner applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the

use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State

of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of the effective date of this 1973 Act, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be

maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. All legal voters within the boundaries of the territory as determined by the department are

eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) Employ, as deemed necessary, persons to assist the area committee in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature inversion activity and prevailing winds;

(B) Characteristics and properties of pesticides used; and

(C) Location of susceptible crops, insects, wildlife and forests.

(c) Any interested person may petition to establish, modify or terminate regulation of pesticide application by filing a petition for modification of regulations of the protected area with the area committee. The area committee, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and establish, modify or terminate the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected

area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.

SECTION 29. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated

within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 landowners, or the owners of more than 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with

the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183, the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application buisinesses in order to facilitate the licensing or certification and regulation of pesticide con-

sultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

Note: Subsection (5) was deleted by amendment.

(6) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants or applicator and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(15) Establish and maintain a system for certification of private applicators. In this regard, the department may take into consideration: shall

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat 973, and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

SECTION 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and

proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of

agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

Note: Subsection (9) was deleted by amendment.

(10) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person

to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by him without first obtaining and maintaining a private applicator certificate.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which

the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due the department prior to the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 and 634 (1971 Replacement Parts) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

SENATE AMENDMENTS TO SENATE BILL 106

By COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

March 13

On page 2 of the printed bill, line 19, delete "formulate" and insert "formulation".

On page 3, line 7, delete "Farmer" and insert "Private".

In line 10 after "ties" insert "or forest crops".

On page 4, line 21, after "person" insert ", including governmental employes,".

On page 6, line 13, after "(b)" delete the rest of the line and delete line 14 and insert "One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries".

In line 15 delete "State Board of Health" and insert "Health Division of the Department of Human Resources".

On page 9, delete lines 4 through 16.

In line 17, delete "(8)" and insert "(7)".

On page 12, line 21, delete "farmer" and insert "private".

In line 27, delete "farmer" and insert "private".

On page 13, line 7, after "operator" delete the comma and insert "or" and in the same line delete "or farmer applicator,".

In line 9, after "applicator" delete the comma.

In line 10, delete "farmer applicator".

In line 11, after "operator" delete the comma and insert "or" and in the same line delete "or farmer applicator".

In line 13, after the second "or" insert "renewal".

In line 17, delete the comma and insert "or" and in the same line delete "or farmer appli-".

In line 18, delete "cator".

In line 20, delete the comma and insert "or" and in the same line delete "or farmer applicator".

In line 28, delete ", farmer applicator".

On page 14, line 10, delete "license" and insert "licensee".

In line 16, delete "is $35" and insert "shall be established by the department not to exceed $40".

In line 17, after "and" insert "not to exceed $15".

In line 18, delete "$10".

In line 22, delete "is $15" and insert "shall be established by the department not to exceed $20".

On page 17, line 5, delete "of $7.50" and insert "to be established by the department not to exceed $10,".

On page 18, line 23, delete "is $10" and insert "shall be established by the department not to exceed $15".

In line 24, after "and" insert "not to exceed $7.50".

In line 25, delete "$5".

In line 30, delete "is $10" and insert "shall be established by the department not to exceed $12.50".

On page 19, line 31, after "be" insert "established by the department not to exceed".

On page 20, line 19, delete the comma and insert "or".

In line 20, after "tors" insert a period and delete the rest of the line.

Delete lines 21 and 22.

In line 24, after "be" insert "established by the department not to exceed".

On page 21, delete lines 3 through 28 and insert:

"**SECTION 20.** (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

"(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.".

On page 22, line 25, after "(3)" insert "Except as otherwise provided in section 15 of this 1973 Act:".

In line 31, after "pesticides" insert "with power driven application equipment or devices".

On page 23, line 5, after "farmer" insert "or forest landowner".

On page 25, line 5, after "area" insert " or restricted area".

In line 6, after "area" insert "or restricted area".

In line 7, after the comma insert "or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973," and in the same line after "area" insert "or restricted area".

In line 8, after "area" insert "or restricted area".

In line 10, after "area" insert "or restricted area".

In line 12, after "area" insert "or restricted area".

In line 15, delete "or the owners of more than" and insert "representing at least".

On page 27, line 33, after the period insert "All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum.".

On page 30, after line 25, insert: "(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.".

In line 27, delete "or the owners of more than" and insert "representing at least".

On page 31, line 28, delete "Order" and insert "order".

In line 29, delete "Order" and insert "order".

On page 32, line 28, delete "farmer" and insert "private".

On page 33, line 8, delete "may" and insert "shall".

Delete lines 15 through 20 and insert:

"**Note:** Subsection (5) was deleted by amendment.".

In line 21, delete the comma and insert "or" and in the same line delete "or".

In line 22, delete "farmer applicator".

On page 34, line 4, delete "farmer" and insert "private".

In line 13, after "consultants" delete the comma and insert "or" and in the same line delete "or farmer applicator".

In line 25, between "restricted" and "use" insert a hyphen.

After line 27, insert:

"(15) Establish and maintain a system for certification of private applicators. In this regard, the department may take into consideration:

"(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat 973, and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

"(b) Minimum periods of experience required and types of experience, education or work acceptable.

"(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.".

On page 37, line 7, delete "application" and insert "applicators' " and in the same line delete "devices" and insert "machinery".

Delete lines 14 through 16 and insert:

"**Note:** Subsection (9) was deleted by amendment.".

In line 27, delete "license" and insert "certificate".

On page 38, line 1, after "agricultural" delete "or" and insert a comma and in the same line after "horticultural" insert "or forest".

In line 2, delete "farmer applicator license" and insert "private applicator certificate".

Senate Bill 106

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
(at the request of the State Department of Agriculture)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Revises provisions relating to application, registration, control and use of pesticides in this state. Declares purpose to regulate in public interest formulation, distribution, storage, transportation, application and use of pesticides.

Creates Committee on Synthetic Chemicals in Environment to provide advisory information to Department of Agriculture and other state agencies in evaluation of use and disposition of pesticides and other synthetic chemicals. Provides for composition, term, compensation and chairman of committee.

Requires classification, registration, labeling and food tolerances of pesticides, and exemptions thereto. Provides for licensing of pesticide consultants, dealers, operators, applicators and farmer applicators, as well as certification of pesticide applicator trainees, and exemptions thereto. Authorizes Department of Agriculture to conduct consultant, applicator, farmer applicator and trainee examinations, reexaminations and educational courses and requires record keeping of pesticide operators. Authorizes establishment by department of protected and restricted areas wherein pesticide application is controlled, and procedures therefor. Provides for departmental authority to investigate losses from commercial pesticide application, as well as authority to administer Act and promulgate regulations. Designates prohibited acts and conditions for seizure of pesticides. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

A BILL FOR AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulate and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold, or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Farmer applicator" means a person who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the prpose of producing agricultural commodities on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage

of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) Three members shall represent the natural resources agencies of the state.

(c) One member shall represent the State Board of Health.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for

the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticides have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The pesticide known as "1080" (sodium fluoroacetate), or any mixture containing such pesticide shall not be registered by the department for any purpose except the following:

(a) The manufacture and sale to or use by agencies or instrumentalities of this state or the Federal Government;

(b) The manufacture and sale to or use only by a person licensed under this 1973 Act to engage in the business of exterminating, destroying, repelling or mitigating commensal rodents or predatory animals.

(c) As to the pesticide known as "1080" (sodium fluoroacetate), or any mixture containg such pesticides:

(A) The manufacture for shipment and sale outside this state;

(B) The manufacture and sale to or use by persons engaged in reforestation operations.

(8) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of

section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, farmer applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, farmer applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides or the pesticide applica-

tion business through the performance of manual labor only, to obtain a license or certificate if the actual application of pesticides is made by:

(a) A licensed pesticide applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator, applicator, or farmer applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator, farmer applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator, applicator or farmer applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant, applicator or farmer applicator and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant, applicator or farmer applicator shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator, farmer applicator or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after

the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

SECTION 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the license to engage in additional classes of pest control or pesticide application buisness for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the license fee is $35 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and $10 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class is $15.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his

financial responsibilitity for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall

be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee of $7.50 by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection (12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee is $10 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and $5 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class is $10.

(5) Examinations or reexaminations for pesticide applictors' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

SECTION 18. (1) The annual license fee for a pesticide consultant shall be $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required

to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators, operators or employes of governmental agencies who make recommendations or conduct research on pesticides as a part of their regular employment duties.

SECTION 19. (1) The annual license fee for a pesticide dealer shall be $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

SECTION 20. (1) The annual license fee for a farmer applicator shall be $7.50, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a farmer applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the farmer applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for farmer applicator's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators, operators or employes of governmental agencies who make recommendations or conduct research on pesticides as a part of their regular employment duties.

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainee who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) (a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides

on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or prinicipal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area territorially identical respectively with each protected area existing as of the effective date of this 1973 Act, if such existing protected area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area hereby created shall bear the name of the formerly designated protected area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners, or the owners of more than 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be

maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the proetcted area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. The department shall determine the results of such election and shall file with the Secretary of

State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) Employ, as deemed necessary, persons to assist the area committee in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pescticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regulations of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of

ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restrictel area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

SECTION 29. (1) Upon receiving a petition of any 25 or more landowners, or the owners of more than 70 percent of the acres of land, situated within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 landowners, or the owners

of more than 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the pre-existing protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several pre-existing protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this 1973 Act upon proof of the filing of an Order as required by section 26 of this 1973 Act. A copy of such Order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183,

the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application buisinesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, farmer applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department may take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain procedures whereby persons formulating, distributing, selling or using strychnine, hydrogen cyanide or the pesticides known as "1080" (sodium fluoroacetate), or any mixture containing such pesticides, for commensal rodent or predatory animal control, shall maintain records as to quantities formulated or stored, areas in which it is used or sold and persons to whom sold.

(6) Establish and maintain types of pesticide consultant, applicator or farmer applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and farmer applicators in cooperation with Oregon State University or others, wherein, as far as practicable, provisions are made to as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licencees may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants, applicator or farmer applicator and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

SECTION 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pestciide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement

of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide application apparatus, devices or equipment without a licensed pesticide applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

(9) Formulate, distribute, sell or use the pesticide known as "1080" (sodium fluoroacetate), or any mixture containing such pesticide, except for the purposes set forth in section 7 of this 1973 Act.

(10) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's license and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic

pesticide to agricultural or horticultural crops on land owned or leased by him without first obtaining and maintaining a farmer applicator license.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due to the department prior to

the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 and 634 (1971 Replacement Parts) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

SENATE COMMITTEE REPORT

Salem, Oregon March 12, 1973

Mr. President:

Your Committee on Agriculture & Natural Resources to whom was referred SB 106, having had the same under consideration, respectfully report it back with the recommendation that it:

_____ Do pass:
XX Do pass with amendments:
_____ Be adopted:
_____ Be adopted with amendments:
_____ Do pass with amendments to the printed engrossed bill.
_____ (Referred to Committee on Ways and Means by prior reference)
_____ (Other—specify)

Voting "AYE" - Senators Hartung, Heard, Howard, Meeker, Ouderkirk and Thorne
Excused - Senator Hallock

(SEE ATTACHED AMENDMENTS)

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.

Mike Meeker
(Chairman)

Sen. Anthony Meeker will lead floor discussion.

(1973)

SENATE AMENDMENTS TO
SENATE BILL 106

On page 2 of the printed bill, line 19, delete "formulate" and insert "formulation".

On page 3, line 7, delete "Farmer" and insert "Private".

In line 10 after "ties" insert "or forest crops".

On page 4, line 21, after "person" insert ~~a comma and~~ "including governmental employes,".

On page 6, line 13 after "(b)" delete the rest of the line and delete line 14 and insert "One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.".

In line 15 delete "State Board of Health" and insert "Health Division of the Department of Human Resources".

On page 9, delete lines 4 through 16.

In line 17, delete "(8)" and insert "(7)".

On page 12, line 21, delete "farmer" and insert "private".

In line 27, delete "farmer" and insert "private".

On page 13, line 7, after "operator" delete the comma and insert "or" and in the same line delete "or farmer applicator,".

In line 9, after "applicator" delete the comma.

In line 10, delete "farmer applicator".

In line 11, after "operator" delete the comma and insert "or" and in the same line delete "or farmer applicator".

In line 13, after the second "or" insert "renewal".

In line 17, after "consultant" delete the comma and insert "or" and in the same line delete "or farmer appli-".

In line 18, delete "cator".

In line 20, after "consultant" delete the comma and insert "or" and in the same line delete "or farmer applicator".

In line 28, after "applicator" delete the comma and "farmer applicator".

On page 14, line 10, delete "license" and insert "licensee".

In line 16, after "fee" delete "is $35" and insert "shall be established by the department not to exceed $40".

In line 17, after "and" insert "not to exceed $15".

In line 18, delete "$10".

In line 22, after "class" delete "is $15" and insert "shall be established by the department not to exceed $20".

On page 17, line 5, after "fee" delete "of $7.50" and insert "to be established by the department not to exceed $10,".

On page 18, line 23, after "fee" delete "is $10" and insert "shall be established by the department not to exceed $15".

In line 24, after "and" insert "not to exceed $7.50".

In line 25, delete "$5".

In line 30, after "class" delete "is $10" and insert "shall be established by the department not to exceed $12.50".

On page 19, line 31, after "be" insert "established by the department not to exceed".

On page 20, line 19, after "applicators" delete the comma and insert "or".

In line 20, after "tors" insert a period and delete the rest of the line. Delete lines 21 and 22.

In line 24, after "be" insert "established by the department not to exceed".

On page 21, delete lines 3 through 28 and insert:

"Section 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

"(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.".

On page 22, line 25, after "(3)" insert "Except as otherwise provided in section 15 of this 1973 Act:".

In line 31, after "pesticides" insert "with power driven application equipment or devices".

On page 23, line 5, after "farmer" insert "or forest landowner".

On page 25, line 5, after "area" insert "or restricted area".

In line 6, after "area" insert "or restricted area".

In line 7, after the comma insert"or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973," and in the same line after "area" insert "or restricted area".

In line 8, after "area" insert "or restricted area".

In line 10, after "area" insert "or restricted area".

In line 12, after "area" insert "or restricted area".

HOME ADDRESS
MICHAEL THORNE
HOLDMAN ROUTE
PENDLETON, OREGON 97801

COMMITTEES
CHAIRMAN:
AGRICULTURE AND NATURAL RESOURCES
VICE CHAIRMAN:
TRANSPORTATION
MEMBER:
EDUCATION
ENVIRONMENT AND LAND USE

OREGON STATE SENATE

SALEM, OREGON
97310

March 13, 1973

You have my approval to correct the amendments to SB 106:

On page 32, line 28, delete "farmer" and insert "private".

Senator Mike Thorne
Chairman

In line 15, delete "or the owners of more than" and insert "representing at least".

On page 27, line 33, after the period insert "All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum.".

On page 30, ~~following~~ all on line 25, insert: "(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with Section 27 of this 1973 Act.".

In line 27, delete "or the owners of more than" and insert "representing at least".

On page 31, line 28, delete "Order" and insert "order".

In line 29, delete "Order" and insert "order".

On page 32, line 28, delete "farmer" and insert "private".

On page 33, line 8, delete "may" and insert "shall".

Delete lines 15 through 20 and insert:

"Note: Subsection (5) was deleted by amendment.".

In line 21, ~~after "consultant"~~ delete the comma and insert "or" and in the same line ~~after "applicator"~~ delete "or".

In line 22, delete "farmer applicator".

On page 34, line 4, delete "farmer" and insert "private".

In line 13, after "consultants" delete the comma and insert "or" and in the same line delete "or farmer applicator".

In line 25, between "restricted" and "use" insert a hyphen.

After line 27, insert:

"(15) Establish and maintain a system for certification of private applicators. In this regard, the department may take into consideration:

"(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat 973, and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135 Et. Seq., as amended thereby, and regulations thereunder.

"(b) Minimum periods of experience required and types of experience, education or work acceptable.

"(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.".

On page 37, line 7, ~~after "pesticide"~~ delete "application" and insert "applicators'" and in the same line ~~after~~ "apparatus," delete "devices" and insert "machinery".

Delete lines 14 through 16 and insert:

"Note: Subsection (9) was deleted by amendment.".

In line 27, delete "license" and insert "certificate".

On page 38, line 1, after "agricultural" ~~insert a comma~~ ~~and~~ delete "or" and in the same line after "horticultural" insert "or forest".

In line 2, delete "farmer applicator license" and insert "private applicator certificate".

Date February 1

TO: Committee on Agriculture and Natural Resources

Room 403

FROM: Engrossing and Enrolling Unit

Attached is Printed Senate Bill 106 with changes made after proofing printed bill from printer. Some of these may require amendments.

cc -

Room

ENGROSSED

Senate Bill 106

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
(at the request of the State Department of Agriculture)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure ~~as introduced.~~

Revises provisions relating to application, registration, control and use of pesticides in this state. Declares purpose to regulate in public interest formulation, distribution, storage, transportation, application and use of pesticides.

Creates Committee on Synthetic Chemicals in Environment to provide advisory information to Department of Agriculture and other state agencies in evaluation of use and disposition of pesticides and other synthetic chemicals. Provides for composition, term, compensation and chairman of committee.

Requires classification, registration, labeling and food tolerances of pesticides, and exemptions thereto. Provides for licensing of pesticide consultants, dealers, operators, applicators and farmer applicators, as well as certification of pesticide applicator trainees, and exemptions thereto. Authorizes Department of Agriculture to conduct consultant, applicator, farmer applicator and trainee examinations, reexaminations and educational courses and requires record keeping of pesticide operators. Authorizes establishment by department of protected and restricted areas wherein pesticide application is controlled and procedures therefor. Provides for departmental authority to investigate losses from commercial pesticide application, as well as authority to administer Act and promulgate regulations. Designates prohibited acts and conditions for seizure of pesticides. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

SECTION 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its ~~formulate~~ formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

SECTION 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold, or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "~~Farmer~~ private applicator" means a person who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the ~~prpose~~ purpose of producing agricultural commodities or forest crops on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

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

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity. , including governmental employees,

(10) "Pesticide consultant" means a person who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

SECTION 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage

of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

SECTION 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the depart ①

insert ① (b) ~~Three members shall represent the na~~ ① One member shall be appointed from the State Forestry Department, one member from the State Game Commission and one member from the State Department of Geology and Mineral Industries.

Quality.

(e) One member shall represent the state's Public Utility Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the emergency service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for

the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

SECTION 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

REGISTRATION, SALE AND USE

SECTION 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticides have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

~~(7) The pesticide known as "1080" (sodium fluoroacetate), or any mixture containing such pesticide shall not be registered by the department for any purpose except the following:~~

~~(a) The manufacture and sale to or use by agencies or instrumentalities of this state or the Federal Government;~~

~~(b) The manufacture and sale to or use only by a person licensed under this 1973 Act to engage in the business of exterminating, destroying, repelling or mitigating commensal rodents or predatory animals.~~

~~(c) As to the pesticide known as "1080" (sodium fluoroacetate), or any mixture containing such pesticides:~~

~~(A) The manufacture for shipment and sale outside this state;~~

~~(B) The manufacture and sale to or use by persons engaged in reforestation operations.~~

delet

(7)

(8) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

SECTION 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

SECTION 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of

section 10 of this 1973 Act, except that they need not be labeled with directions for use or the professed standard of quality.

(2) (a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies;

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

SECTION 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

SECTION 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

SECTION 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

SECTION 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

SECTION 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, ~~farmer~~ private applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, ~~farmer~~ private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides or the pesticide applica-

tion business through the performance of manual labor only, to obtain a license or certificate if the actual application of pesticides is made by:

(a) A licensed pesticide applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator, applicator, ~~or farmer applicator~~, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator, ~~farmer applicator~~ or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator, applicator ~~or farmer applicator~~ license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant, applicator ~~or farmer applicator~~ and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant, applicator ~~or farmer applicator~~ shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator, ~~farmer applicator~~ or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after

the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

SECTION 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the ~~license~~ to engage in additional classes of pest control or pesticide application ~~buisness~~ for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3) (a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the license fee ~~is $35~~ shall be established by the department not to exceed $40 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and ~~$10~~ not to exceed $15 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class ~~is $15~~ shall be established by the department not to exceed $10.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his

financial responsibilitity for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall

be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be: to be established by the department not to exceed $10,

(a) Issued by the department upon payment of a fee ~~of $7.50~~ 6 by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection (12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

SECTION 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4) (a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the shall be established by the department not to exceed $15 license fee ~~is $10~~ for the first class of pest control or pesticide application not to exceed $7.50 business as prescribed in subsection (2) of section 32 of this 1973 Act and ~~$5~~ for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of shall be established by the department not to exceed $12.50 this 1973 Act, the fee for each additional class ~~is $10~~ at cost

(5) Examinations or reexaminations for pesticide ~~applictors~~ licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

SECTION 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

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SECTION 18. (1) The annual license fee for a pesticide consultant established by the department not to exceed shall be $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required

to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators, or operators, ~~or employes of governmental agencies who make recommendations or conduct research on pesticides as a part of their regular employment duties.~~

SECTION 19. (1) The annual license fee for a pesticide dealer shall be established by the department not to exceed $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

insert (2) ~~SECTION 20. (1) The annual license fee for a farmer applicator shall~~ ... for such license, or re-

(2) Bf Section 20. (1) The department shall issue or renew its private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to subsection (15) of section 32 of this 1973 Act.

(2) No fee shall be assessed for a private applicator's certificate or renewal thereof.

~~(c) ... f pesticides and the precautions to be taken in connection therewith.~~

~~(d) The applicable laws and rules relating to pesticides and their application in this state.~~

~~(e) Other requirements or procedures which will be of benefit to and protect the farmer applicator, the persons who use his services and the property of others.~~

~~(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.~~

~~(4) Examinations or reexaminations for farmer applicator's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.~~

~~(5) This section shall not apply to licensed pesticide applicators, operators or employes of governmental agencies who make recommendations or conduct research on pesticides as a part of their regular employment duties.~~

SECTION 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide ~~trainee~~ trainee who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

SECTION 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Except as otherwise provided in section 15 of this 1973 Act:

(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides with power driven application equipment or devices under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides

on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or ~~principal~~ work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

SECTION 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

SECTION 24. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of the effective date of this 1973 Act, if such existing protected area or restricted area was established pursuant to ORS 573.537 and in effect June 1, 1973, under the name of the formerly designated protected or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected or restricted area and shall function as authorized by the provisions of this 1973 Act.

SECTION 25. (1) Upon receiving a petition of any 25 or more landowners representing at least ~~or the owners of more than~~ 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

SECTION 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be

maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

SECTION 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the ~~proeteted~~ area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. The departr

insert (4) (4) All legal voters within the boundaries of the territory as determined by the department are eligible to vote in the referendum.

State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2) (a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) Employ, as deemed necessary, persons to assist the area committee in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(H) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (G) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4) (a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pesticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regulations of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

SECTION 28. (1) At any time after the establishment of a protected area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of

ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3) (a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a ~~restricted~~ restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(5)(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with section 27 of this 1973 Act.

the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2) (a) Upon receiving a petition of any 25 landowners, or the owners

of more than 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

SECTION 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

SECTION 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

SECTION 32. In accordance with the provisions of ORS chapter 183,

the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application buisinesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, ~~farmer~~ private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department ~~may~~ shall take into consideration:

(a) Laws and regulations of the Federal Government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

~~(5) Establish and maintain procedures whereby persons formulating, distributing, selling or using strychnine, hydrogen cyanide or the pesticides known as "1080" (sodium fluoroacetate), or any mixture containing such pesticides, for commensal rodent or predatory animal control, shall maintain records as to quantities formulated or stored, areas in which it is used or sold and persons to whom sold.~~ delete

Note: Subsection (5) was deleted by amendment.

(6) Establish and maintain types of pesticide consultant, applicator ~~or farmer applicator~~ examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and ~~farmer~~ private applicators in cooperation with Oregon State University or others, wherein, as far as practicable, provisions are made ~~to~~ so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of ~~licencees~~ may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants, or applicator ~~or farmer applicator~~ and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(15) Establish and maintain a system for certification of private applicators. In this regard, the department may take

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(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the ~~pesticide~~ or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the Federal Government, or any of its agencies, for the purpose of enforcement

of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10) (a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

(A) The particular ester allowed;

(B) The boundaries of the area in which it may be used; and

(C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

SECTION 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide ~~application~~ apparatus, ~~devices~~ or equipment without a licensed pesticide applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

~~(9) Formulate, distribute, sell or use the pesticide known as "1080" (sodium fluoroacetate), or any mixture containing such pesticide, except for the purposes set forth in section 7 of this 1973 Act.~~

Note: Subsection (9) was deleted by amendments.

(10) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's ~~license~~ certificate and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic

pesticide to agricultural ~~or~~ horticultural crops on land owned or leased by him without first obtaining and maintaining a ~~farmer applicator license~~.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

SECTION 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due ~~to~~ the department prior to

the effective date of this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

SECTION 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

SECTION 37. ORS chapters 573 and 634 (1971 Replacement Parts) are hereby repealed.

SECTION 38. Unit citations are only for convenience and are not part of the statute law of this state.

A BILL FOR

AN ACT

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 and 634 (1971 Replacement Part); and providing penalties.

Be It Enacted by the People of the State of Oregon:

Section 1. Sections 2 to 36 of this 1973 Act are added to and made a part of ORS chapter 634.

MISCELLANEOUS PROVISIONS

Section 2. The purpose of this 1973 Act, which shall be known as the State Pesticide Control Act and shall be enforced by the department, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulate and use of

pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.

Section 3. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trade-mark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Farmer applicator" means a person who uses or supervises the use of any pesticide, classified by the department as

a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities on land owned or leased by him.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to his interest, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing ~~abscission;~~

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

(e) "Insecticide" which means any substance or mixture of substances intended for preventing, destroying, repelling

or mitigating any insects which may be present in any environment whatsoever;

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce 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;

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, man, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically

directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this 1973 Act to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employe of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this 1973 Act.

(20) "Restricted area" means an area established under the provisions of this 1973 Act to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

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

Section 4. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The department shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of the committee, established by section 5 of this 1973 Act, and other governmental agencies or bodies.

Section 5. (1) There is established the Committee on Synthetic Chemicals in the Environment, consisting of 12 members, 11 of whom shall be appointed by the Governor and serve at his pleasure.

(2) The committee shall be appointed as follows:

(a) One member shall represent the department.

(b) Three members shall represent the Natural Resources agencies of the state.

(c) One member shall represent the State Board of Health.

(d) One member shall represent the Department of Environmental Quality.

(e) One member shall represent the state's Public Utility

Commissioner or Department of Transportation.

(f) One member shall represent the Environmental Health Sciences Center of Oregon State University.

(g) One member shall represent the pesticide chemical industry.

(h) Two members shall represent the public at large.

(i) One member shall represent the Emergency Service agencies of the state.

(3) The term of each member, except the department's representative, shall be for three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term. Members shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be paid by the agency or governmental body served by the committee. A majority of the committee shall constitute a quorum for the transaction of business. A meeting may be called by the Director of Agriculture or the chairman of the committee.

(4) The Director of Agriculture shall in July of each year appoint either the representative of the department or the representative of the Department of Environmental Quality as the chairman of the committee to serve for one year. A chairman may be reappointed without limitation.

BY Section 6. (1) The Committee on Synthetic Chemicals in the Environment shall be composed of knowledgeable and capable persons within Oregon who are experienced with the management and

use of pesticides and other synthetic chemicals.

(2) The purposes of such committee are to provide advisory information and creative leadership in the evaluation of the use and disposition of pesticides and other synthetic chemicals, considering the risk involved to the environment versus the benefits to be derived therefrom, and to that end to conduct reviews and studies for the development of factual data relevant to such evaluation.

(3) The committee may advise the department and any other state agency or governmental body in connection with the enforcement of laws over which each has jurisdiction in the field of pesticides or other synthetic chemicals, including disposition of residues from the manufacture of such materials and containers thereof, transportation, sale or use.

BF

REGISTRATION, SALE AND USE

BF Section 7. (1) Every brand, and each formula or formulation thereunder, of pesticide manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each brand, and each formula or formulation thereunder, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each brand, and each formula or formulation thereunder, which shall not exceed $40 for each such brand, or each formula or formulation thereunder.

(6) The department, at the time of application for registration of any pesticide may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have

been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) ~~(i)~~ The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) ~~(ii)~~ Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under subsection (11) of section 32 of this 1973 Act.

(C) ~~(iii)~~ The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) ~~(iv)~~ Residual or delayed toxicity of the material.

(E) ~~(v)~~ The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The pesticide known as "1080" (sodium fluoroacetate), or any mixture containing such pesticide shall not be registered by the department for any purpose except the following:

(a) The manufacture and sale to or use by agencies or instrumentalities of this state or the Federal Government;

(b) The manufacture and sale to or use only by a person licensed under this 1973 Act to engage in the business of exterminating, destroying, repelling or mitigating commensal rodents or predatory animals.

(c) As to the pesticide known as "1080" (sodium fluoroacetate), or any mixture containing such pesticide:

(A) ~~(i)~~ The manufacture for shipment and sale outside this state;

(B) ~~(ii)~~ The manufacture and sale to or use by persons engaged in reforestation operations.

(8) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in section 33 of this 1973 Act.

Section 8. The department may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices.

Section 9. (1) The provisions of section 7 of this 1973 Act are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of section 10 of this 1973 Act, except that they need not be labeled with directions for use

or the professed standard of quality.

(2)(a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the department. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(i) Federal or state agencies;

(ii) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications.

Section 10. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trade-mark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime.

Section 11. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by section 10 of this 1973 Act.

Section 12. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or

in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended.

Section 13. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the department, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of paragraph (b) of subsection (1) of ORS 616.235, unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed, or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not,

by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235, provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a commercial fertilizer, agricultural minerals or lime mix in which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of paragraph (c) of subsection (1) of section 10 of this 1973 Act, the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre.

COMMERCIAL APPLICATION

Section 14. (1) Any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, farmer applicator or trainee by this 1973 Act shall expire on December 31 following issuance unless it has been revoked or suspended prior thereto by the department. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator,

farmer applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this 1973 Act shall be construed as requiring a person, helping or assisting in the application of pesticides or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator; or

(b) A person applying pesticides under the provisions of section 22 of this 1973 Act.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator, applicator, or farmer applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator, farmer applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator, applicator, or farmer applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid plus a penalty equal to 20 percent of the license or certificate fee, whichever is applicable.

(6) If such person is a pesticide consultant, applicator

or farmer applicator and does not pay both the license fee plus the penalty during the first month in which the license fee is delinquent, thereafter such pesticide consultant, applicator or farmer applicator shall not only pay both amounts but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in section 16 of this 1973 Act, or otherwise demonstrate his knowledge of the subject to the satisfaction of the department.

(7) No penalty or penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by his signed statement that prior to his application he has not operated or worked as a pesticide consultant, applicator, farmer applicator or trainee, as the case may be, during the previous six months or since the expiration date of his last license or certificate, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable penalty provisions of subsections (5) and (6) of this section.

Section 15. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the department under subsection (2) of

section 32 of this 1973 Act.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in subsection (2) of section 32 of this 1973 Act.

(3)(a) At the time a person first makes application for a license or renewal thereof as a pesticide operator for a specific license period, the license fee is $35 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and $10 for each additional class.

(b) After a person makes his first application for a specific license period, if later during the same license period he desires to engage in additional classes of pest control or pesticide application businesses, the fee for each additional class is $15.

(4) At least one person who is owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or is a partnership. At least one officer or one employe shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a

corporation. At any time there is a violation of this subsection, the pesticide operator's license, notwithstanding the provisions of ORS chapter 183, shall be automatically suspended until such time as the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to him under section 16 of this 1973 Act.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of such insurance, has furnished a deposit of cash or negotiable securities acceptable to the department which may be applied by the department to the payment of damages resulting from such liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility

required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section shall be in the amount of not less than $25,000 for bodily injury to one or more persons and not less than $25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, at any time the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, his license shall be automatically suspended until the department again verifies he is in compliance with the provisions of such subsections of this section. The department shall be notified in writing by the liability insurance company at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of his use of pesticides, or his financial responsibility for the same shall be limited to actual damages only.

(9) The deposit required by subsection (5) of this section shall be returned to the pesticide operator if he at any time establishes exemption from the financial responsibility requirements under this 1973 Act. After the expiration of two years from the date of an injury, death, loss or damage, any deposit remaining

shall be returned to the pesticide operator or to his personal representative except that the department shall not make such return if it has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that such action is pending or that any judgment resulting from such action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by regulation allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by regulation allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12) The State of Oregon or its agencies, counties, cities, municipal corporations, other ~~than~~ governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities, shall not be required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department, while applying pesticides to land or property under their ownership, supervision, control or jurisdiction.

(13) The employes of the persons or agencies described

in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this 1973 Act, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this 1973 Act relating thereto.

(14) The public applicator license or public trainee certificate, as the case may be, shall be:

(a) Issued by the department upon payment of a fee of $7.50 by the applicant.

(b) Valid and used by the licensee or certificate holder only while working for and employed by one of the persons, agencies or others named in subsection (12) of this section on land or property under the ownership, supervision or jurisdiction thereof.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) As to persons, public agencies or others described in subsection (12) of this section, and subdivisions of government and their employes, the provisions of subsection (13) of this section shall apply only to:

(a) Application of pesticides by aerial spraying; or

(b) The propelling through air by machine-powered devices of spray or dust containing pesticides; and

(c) Where such application is done by such persons or agencies and their employes, such application shall be done under the immediate supervision of a person holding a license as a pesticide applicator or public applicator.

Section 16. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the department, if the applicant:

(a) Is at least 18 years of age;

(b) Proves to the satisfaction of the department that he:

~~(i)~~ (A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department; or

~~(ii)~~ (B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

~~(iii)~~ (C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pest control or pesticide application businesses established by the department under subsection (2) of section 32 of this 1973 Act.

(4)(a) At the time a person first makes application for a license or renewal thereof as a pesticide applicator for a specific license period, the license fee is $10 for the first class of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act and $5 for each additional class.

(b) After a person makes his first application for license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in subsection (2) of section 32 of this 1973 Act, the fee for each additional class is $10.

(5) Examinations or reexaminations for pesticide applicators' licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employes

or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employes of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this 1973 Act, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay $5 to partially reimburse the department for its costs prior to the department giving any future reexamination to the applicant.

17 Section 17. (1) In accordance with regulations promulgated by the department, as provided in subsection (1) of section 32 of this 1973 Act, the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator;

(d) Is in compliance with the applicable provisions of this 1973 Act and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator.

Section 18. (1) The annual license fee for a pesticide consultant shall be $20, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicators, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide applicators, operators or employes of governmental agencies who make recommendations or conduct research on pesticides as a part of their regular employment duties.

Section 19. (1) The annual license fee for a pesticide dealer shall be $10, payable at the time application is made for such license, or renewal thereof. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of his services, or through his licensed employes, through the use of his own equipment;

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employes for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size.

Section 20. (1) The annual license fee for a farmer

applicator shall be $7.50, payable at the time application is made for such license, or renewal thereof.

(2) An applicant for a farmer applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the farmer applicator, the persons who use his services and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine him only in any one or more of the classes of pesticides established by the department under subsection (2) of section 32 of this 1973 Act.

(4) Examinations or reexaminations for farmer applicator's licenses shall be subject to subsections (5) and (6) of section 16 of this 1973 Act.

(5) This section shall not apply to licensed pesticide

applicators, operators or employes of governmental agencies who make recommendations or conduct research on pesticides as a part of their regular employment duties.

Section 21. (1) Pesticide operators shall prepare and maintain records on forms approved by the department. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the F.A.A. number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in paragraphs (a), (b), (c), (e), (f) and (g) of subsection (1) of this section.

Section 22. The provisions of sections 14 to 17 and section 21 of this 1973 Act shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3)(a) Agencies, instrumentalities and political subdivisions of the United States or the State of Oregon and their officers, agents or employes acting within the scope of their authority in the conduct of research of pesticides or in the application of pesticides upon property owned or under the control, supervision or jurisdiction of such agencies, instrumentalities or political subdivisions; however, this exemption shall not apply to pesticide operators applying pesticides under contract for such agencies, instrumentalities or political subdivisions.

(b) Counties, cities or municipal corporations which only authorize or permit their employes and their pesticide equipment to apply pesticides on property owned or under the control, supervision or jurisdiction of each such governmental body, or in enforcing or carrying out a law, ordinance, rule or order

relating to the application of pesticides for the purposes of controlling or eradicating noxious weeds or pests.

(4) A farmer applying pesticides, other than restricted-use or highly toxic pesticides, by use of his own equipment for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold himself out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employes, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, such application shall be under the direct supervision of a licensed public applicator.

Section 23. (1) No action against a pesticide operator, arising out of the use or application of any pesticide, shall be commenced unless the claimant has filed a report of the loss with the department, and mailed or personally delivered a true

copy of such report of loss to the pesticide operator allegedly responsible and a true copy of such report to the person for whom such work was done, if other than himself, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within 60 days from the occurrence of such loss or within 60 days from the date when the claimant discovered that such loss had occurred. If the damage is alleged to have been caused to growing crops, the report shall be filed prior to the time when 50 percent of the crop is harvested.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation,

examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

PROTECTED AND RESTRICTED AREAS

Section 24. There hereby is created a protected area territorially identical respectively with each protected area existing as of the effective date of this 1973 Act, if such existing protected area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area hereby created shall bear the name of the formerly designated protected area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area and shall function as authorized by the provisions of this 1973 Act.

Section 25. (1) Upon receiving a petition of any 25 or more landowners, or the owners of more than 70 percent of the acres of land, situated within the territory proposed to be a protected area, the department may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times,

methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area.

If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making his determination pursuant to the authority granted under subsection (2) of ORS 561.520, the Director of the department shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

Section 26. In addition to the filings of an order establishing a protected area as required by subsection (1) of ORS 561.530, a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate.

Section 27. (1) A protected area, established pursuant to the provisions of this 1973 Act, shall be governed and ad-

ministered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this section, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in section 26 of this 1973 Act, the department shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) ~~(i)~~ The address of the department;

(B) ~~(ii)~~ The time within which the petition to nominate is to be filed;

(C) ~~(iii)~~ The fact that 25 or more voters, or two-thirds of the voters then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) ~~(iv)~~ The fact that such voters may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) ~~(v)~~ The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in paragraph (a) of subsection (1) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this section, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall

thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of his term.

(2)(a) Upon the establishment of the area committee, the members thereof shall designate a chairman, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) ~~(i)~~ Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) ~~(ii)~~ Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area.

(C) ~~(iii)~~ Employ, as deemed necessary, persons to assist the area committee in its administration and enforcement activities, including issuance of permits to applicators;

(D) ~~(iv)~~ Not engage in the business of buying or selling pesticides;

(E) (v) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) (vi) Carry out the procedures for the establishment of a restricted area as provided in section 28 of this 1973 Act;

(G) (vii) Prepare and make public at annual meetings to be called by the area committee chairman, annual reports and audits.

(viii) Be authorized to receive funds from any source and use the same to carry out and enforce the provisions of sections 25 to 31 of this 1973 Act.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subparagraph (vii) of paragraph (b) of subsection (2) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4)(a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(i) Topography and climate, including temperature, humidity and prevailing winds;

(ii) Characteristics and properties of pesticides used or applied; and

(iii) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regulations of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly.

Section 28. (1) At any time after the establishment of a protected area, the department at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3)(a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area,

and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in subsection (5) of section 25 of this 1973 Act shall be considered.

(c) The provisions of section 26 of this 1973 Act shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in paragraph (b) of subsection (2) of section 27 of this 1973 Act, and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

Section 29. (1) Upon receiving a petition of any 25 or more landowners, or the owners of more than 70 percent of the acres of land, situated within a protected area, the department may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2)(a) Upon receiving a petition of any 25 landowners, or the owners of more than 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may

consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the pre-existing protected areas shall terminate upon the filing of the order described in section 26 of this 1973 Act. The provisions of section 26 of this 1973 Act apply to the newly consolidated protected area, and all rights, powers, assets and duties of the several pre-existing protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with the provisions of section 27 of this 1973 Act.

Section 30. (1) The area committee of a protected area may levy and cause to be collected an ad valorum tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this 1973 Act.

(2) The levy in any one year shall not exceed one-fortieth of one percent (.00025) of the true cash value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area.

Section 31. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this 1973 Act upon proof of the filing of an order as required by section 26 of this 1973 Act. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ADMINISTRATION, PROHIBITIONS AND PENALTIES

Section 32. In accordance with the provisions of ORS chapter 183, the department is authorized to promulgate regulations necessary to carry out the purposes and intent of this 1973 Act, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or

as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in ~~each~~ subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this 1973 Act.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, farmer applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order

to qualify for an exemption under the provisions of section 22 of this 1973 Act.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department may take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain procedures whereby persons formulating, distributing, selling or using strychnine, hydrogen cyanide or the pesticides known as "1080" (sodium fluoroacetate), or any mixture containing such pesticides, for commensal rodent or predatory animal control, shall maintain records as to quantities formulated or stored, areas in which it is used or sold and persons to whom sold.

(6) Establish and maintain types of pesticide consultant, applicator or farmer applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in subsection (5) of section 16 of this 1973 Act.

(7) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by section 15 of this 1973 Act, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(8) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by section 15 of this 1973 Act.

(9) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and farmer applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(10) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, con-

sultants, applicator or farmer applicator and establish charges therefor.

(11) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this 1973 Act. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(12) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(13) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(14) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

Section 33. In carrying out and enforcing the provisions of this 1973 Act, the department is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this 1973 Act.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this 1973 Act.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this 1973 Act, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this 1973 Act have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this 1973 Act.

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this 1973 Act.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;

(c) Uses or applications;

(d) Methods of sale, including prescription or permit requirements; or

(e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in subsection (5) of section 32 of this 1973 Act, and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the federal government, or any of its agencies, for the purpose of enforcement of the provisions of this 1973 Act or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this 1973 Act.

(10)(a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher

volatility with regard to plant damage. Each such permit shall specify:

~~(i)~~ The particular ester allowed;

~~(ii)~~ The boundaries of the area in which it may be used; and

~~(iii)~~ The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this 1973 Act.

Section 34. No person shall:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or wilfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this 1973 Act.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this 1973 Act.

(7) Operate pesticide application apparatus, devices or equipment without a licensed pesticide applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license.

(9) Formulate, distribute, sell or use the pesticide known as "1080" (sodium fluoroacetate), or any mixture containing such pesticide, except for the purposes set forth in section 7 of this 1973 Act.

(10) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license, nor

shall such person engage in a class of pesticide application business which is not specifically authorized by license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(11) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's license and is otherwise in compliance with the provisions of this 1973 Act.

(12) Act, or represent himself, as a pesticide dealer or advertise himself as such without first obtaining and maintaining a pesticide dealer's license.

(13) Act, or represent himself, as a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(14) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural or horticultural crops on land owned or leased by him without first obtaining and maintaining a farmer applicator license.

(15) As a person described in subsection (5) of section 22 of this 1973 Act, use power driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(16) Deliver, distribute, sell or offer for sale any pesticide which is misbranded.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated.

(18) Formulate, deliver, distribute, sell or offer for

sale any pesticide which has not been registered as required by section 7 of this 1973 Act.

(19) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored.

(20) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(21) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such application contrary to the conditions or terms of the permit so issued.

(22) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in subsection (10) of section 33 of this 1973 Act.

(23) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in subsection (3) of section 33 of this 1973 Act.

Section 35. The department shall deposit all fees and moneys paid to it under the provisions of this 1973 Act in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account and all moneys collected or due the department prior to the effective date of this

section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this 1973 Act.

Section 36. Violation of any of the provisions of this 1973 Act is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both.

Section 37. ORS chapters 573 and 634 (1971 Replacement Parts) are hereby repealed.

Section 38. Unit citations are only for convenience and are not part of the statute law of this state.

SENATE BILL BACK

(1)

▼ CROSS OUT INAPPLICABLE WORDS ▼

BILL
~~RESOLUTION~~ X
~~MEMORIAL~~ } NUMBER 106

Title:

Relating to the application, registration, control and use of pesticides in Oregon; creating new provisions; repealing ORS chapters 573 and 634 (1971 Replacement Part); and providing penalties.

Principal Sponsors:

~~By Senate~~ Committee on Agriculture and Natural Resources (at the request of the State Department of Agriculture)

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