

# Chapter 11: State Nutrient, Pesticide And Seed Laws

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## Nutrient laws

Under the 17 states' laws, all persons who want to sell, offer for sale, or distribute any commercial fertilizer or soil conditioner must obtain a fertilizer permit and license from an authorized official. Each brand and grade of commercial fertilizer must be registered prior to distribution. All commercial fertilizer distributed in containers must comply with labeling requirements. All persons who sell or offer for sale any commercial fertilizer must pay an inspection fee. All licensees must furnish to the authorized official a report showing the number of tons of each grade of fertilizer sold in each county of the state. The authorized official has the mandatory duty to sample, inspect, and test commercial fertilizers or soil conditioners distributed within the state. To carry out his or her duty, the official is allowed to enter upon public or private premises or carriers to determine compliance with the laws. If the analysis shows that the commercial fertilizer is deficient in one or more of its guaranteed primary plant nutrients beyond the *investigational allowances* as established by regulation, a penalty will be imposed. In the event of violation of the law or any promulgated rule or regulation pursuant to such laws, the official can issue and enforce a *stop sale, use, or removal* order. However, persons aggrieved or adversely affected by the authoritative person's decision can appeal such decision to the court of competent jurisdiction. Moreover, any lot or quantity of commercial fertilizer not in compliance with any provisions of the laws or adopted rules and regulations will be subject to suspension from sale, seizure, and condemnation.

However, the states are slightly different as to the allowed percentage of *primary plant nutrients guaranteed analysis*. For example, for Georgia, superphosphate cannot contain less than 18 percent available phosphoric acid. Mixed fertilizer cannot contain less than a total of 20 percent nitrogen, available phosphoric acid and potash. For Wisconsin, mixed fertilizer must have the sum of the guaranteed nitrogen, available phosphoric acid and soluble potash totaling 24 percent or more.

**Delaware (region 1).**—Under the Delaware Commercial Fertilizer and Soil Conditioner Law of 1971,<sup>2285</sup> the following provisions are applicable to all activities concerning fertilizers within Delaware:

- Each brand and grade of commercial fertilizer must be registered before any distribution in Delaware. Registration application must be accompanied by—  
a fee of \$1.15 per brand and grade, or \$28.75 for each package containing 10 pounds or less, and  
various informational data.<sup>2286</sup>
- All commercial fertilizers distributed in containers must comply with the labeling requirements.<sup>2287</sup>

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<sup>2285</sup> Delaware Commercial Fertilizer and Soil Conditioner Law of 1971, DEL. CODE ANN. § 2101 et seq. (1985 & Supp. 1992).

<sup>2286</sup>Id. § 2104 (Supp. 1992).

<sup>2287</sup>Id. § 2105. For more details on the labeling requirements, Id.

- All commercial fertilizers or soil conditioners distributed in Delaware must pay an inspection fee at the rate of \$0.10 per ton.<sup>2288</sup>
- All persons are prohibited from distributing misbranding<sup>2289</sup> or adulterated commercial fertilizers or soil conditioners.<sup>2290</sup>

The Secretary of the State Department of Agriculture has the mandatory duty to sample, inspect, and test commercial fertilizers or soil conditioners distributed within Delaware. To carry out his or her duty, the secretary is authorized to enter upon any public or private premises or carriers to determine compliance with the act.<sup>2291</sup> Moreover, if—

the analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary plant nutrients (NPK) beyond the "investigational allowances" as established by regulation, or

the overall index value of fertilizer is below the level established by regulation, a penalty of 2.3 times the commercial value will be imposed.<sup>2292</sup>

For the purpose of determining the commercial value, the secretary is required to determine and publish annually the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers.<sup>2293</sup> Moreover, the Secretary is authorized to prescribe and enforce rules and regulations regarding to investigational allowances, definitions, records, and the distribution of commercial fertilizers and soil conditioners as deemed necessary to effectuate the act.<sup>2294</sup>

In the event that violation of the act or any promulgated rule or regulation takes place, the secretary can issue and enforce a "stop sale, use or removal" order.<sup>2295</sup> However, persons aggrieved or adversely affected by the secretary's decision may appeal such decision to the court of competent jurisdiction.<sup>2296</sup> Moreover, any lot or quantity of commercial fertilizer not in compliance with any provisions of the Delaware Commercial Fertilizer and Soil Conditioner Law of 1971 or adopted rules and regulations will be subject to suspension from sale, seizure, and condemnation.<sup>2297</sup>

The act is to be administered by the State Department of Agriculture.<sup>2298</sup> This act does not restrict or void sales or exchanges of commercial fertilizers between manufacturers, processors, or shipment of fertilizers to manufacturers or processors.<sup>2299</sup>

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<sup>2288</sup>DEL. CODE ANN. § 2106.

<sup>2289</sup>Id. § 2110.

<sup>2290</sup>Id. § 2111.

<sup>2291</sup>Id. § 2107.

<sup>2292</sup>Id. § 2108 (Supp. 1992).

<sup>2293</sup>Id. § 2109 (1985).

<sup>2294</sup>Id. § 2113.

<sup>2295</sup>Id. § 2116.

<sup>2296</sup>Id. § 2120. Such appeal must be on the record and limited to a determination as to whether the Secretary has abused the discretion. Id.

<sup>2297</sup>Id. § 2117 (1985).

<sup>2298</sup>Id. § 2102.

<sup>2299</sup>Id. § 2121.

**Maryland (region 1).**—The administration of the Maryland Commercial Fertilizer law<sup>2300</sup> belongs to the state chemist subject to the supervision of the Secretary of the State Department of Agriculture.<sup>2301</sup> The secretary has the mandatory obligation to enforce this law; after proper notice and public hearing, the secretary can adopt reasonable rules and regulations necessary to secure the efficient administration of this law.<sup>2302</sup> To pay for administration expenses, a fund is created that shall consist of any registration or inspection fee and penalties/fines.<sup>2303</sup>

The secretary is required to publish annually information concerning fertilizers and soil conditioners<sup>2304</sup> and to sample, inspect, test, and make analyses of any commercial fertilizer and soil conditioner.<sup>2305</sup> The secretary has the discretion to enter any public or private premises to obtain access to commercial fertilizer or soil conditioners or to records relating to their distribution.<sup>2306</sup>

The law requires all distributors to register each brand and grade of commercial fertilizer and each soil conditioning product before distributing it in the State and to pay a registration fee.<sup>2307</sup> If requested by the secretary, the registration application must be accompanied by a label or other printed matter describing the product.<sup>2308</sup> Registration expires annually on January 31.<sup>2309</sup>

However, the law provides two exemptions from the registration requirement. The distributor does not have to register—

the brand and grade of commercial fertilizer or product name of soil conditioner if such has been registered by another person, provided that the product label has not been changed or altered, or

the commercial fertilizer is mixed or blended according to a formula furnished by a consumer, provided that the distributor labels the fertilizer in the order and form (distributor must register if the fertilizer is mixed in advance of receipt of the customer's specific order).<sup>2310</sup>

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<sup>2300</sup>Maryland Commercial Fertilizer Law, MD. CODE ANN., AGRI. § 6-201 to 6-220 (1985 & Supp. 1994).

<sup>2301</sup>Id. § 6-202 (1985).

<sup>2302</sup>Id. § 6-203.

<sup>2303</sup>Id. § 6-204 (1985).

<sup>2304</sup>Id. § 6-205.

<sup>2305</sup>Id. § 6-206(a).

<sup>2306</sup>Id. § 6-206(e) (1985 & Supp. 1994).

<sup>2307</sup>Id. § 6-207(a) (1985 & Supp. 1994). In 1994, the Maryland Legislature increased the annual registration and inspection fees for each brand and grade of commercial fertilizer and for each soil conditioner as follows:

	As of 1984	As of 1989
General registration fee	\$10	\$15
General inspection fee	20 cents per ton	25 cents per ton
– Registration fee: distributed in packages of 10 lb or less	\$25	\$30
– Inspection fee: distributed in packages of 10 lb or less	0	0
– Registration fee: distributed in packages of 10 lb or less and in packages over 10 lb	\$25	\$30
– Inspection fee: distributed in packages of 10 lb or less and in packages over 10 lb	20 cents per ton	25 cents per ton

Id. § 6-208 (1985 & Supp. 1994).

<sup>2308</sup>MD. CODE ANN., AGRI. § 6-207(b) (1985 & Supp. 1994).

<sup>2309</sup>Id. § 6-207(c).

<sup>2310</sup>Id. § 6-207(d).

The law requires all persons who register any commercial fertilizer or soil conditioner to furnish the secretary with a semiannual written statement of the tonnage of each grade of commercial fertilizer or each soil conditioner distributed in Maryland.<sup>2311</sup> If the registrant fails to file the required statement, a collection fee of 10 percent of the amount, or a minimum of \$10 must be paid.<sup>2312</sup>

In addition, all distributors in Maryland must label each brand and grade fertilizer and soil conditioner legibly.<sup>2313</sup> All persons are prohibited from distributing an adulterated or misbranded fertilizer or a misbranded soil conditioner.<sup>2314</sup> The secretary will impose on the registrant a penalty equal to two times the value of the actual shortage if determined that the consumer possesses any commercial fertilizer or soil conditioner short in weight.<sup>2315</sup>

In enforcing this law, the secretary has a number of options:

- Issue a stop-sale order.<sup>2316</sup>
- Petition the county circuit court to condemn and confiscate the commercial fertilizer or soil conditioner not in compliance with this law.<sup>2317</sup>
- Grant a temporary or permanent injunction restraining the person from violating or continuing to violate this law.<sup>2318</sup>

The law also provides that when the secretary reports a violation of this law to the state's attorney, the state's attorney must institute appropriate judicial proceedings without delay.<sup>2319</sup> However, the secretary does not have to report minor violations for prosecution or for institution of condemnation proceedings if the public interest can be served best by a suitable written warning notice.<sup>2320</sup>

**Pennsylvania (region 1).**—On April 19, 1995, the Nutrient Management Advisory Board of Pennsylvania adopted the Recommended Nutrient Management Regulations to present to the State Conservation Commission for formal adoption as proposed regulations.<sup>2321</sup> The Nutrient Management Regulations will be discussed in the *recommended* form.

The Nutrient Management Regulations were created with these purposes:<sup>2322</sup>

Assuring the proper utilization and management of nutrients on concentrated animal operations (CAO's).

Encouraging the proper utilization and management of nutrients on other agricultural operations.

Protecting the quality of surface water and ground water.

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<sup>2311</sup>MD. CODE ANN., AGRI. § 6-209(a).

<sup>2312</sup>Id. § 6-209(b) (1985 & Supp. 1994).

<sup>2313</sup>Id. § 6-210 (1985).

<sup>2314</sup>Id. § 6-211 (Supp. 1994).

<sup>2315</sup>Id. § 6-212 (1985).

<sup>2316</sup>Id. § 6-214(a) (Supp. 1994).

<sup>2317</sup>Id. § 6-214(c) (Supp. 1994).

<sup>2318</sup>Id. § 6-217 (1985).

<sup>2319</sup>Id. § 6-216(a).

<sup>2320</sup>Id. § 6-216(b).

<sup>2321</sup>Recommended Nutrient Management Regulations, adopted by Nutrient Management Advisory Board, April 19, 1995, § 83.201 et seq.

<sup>2322</sup>Id. § 83.203.

The regulations identify a CAO as an agricultural operation where the animal density exceeds two AEU per acre on an annualized basis.<sup>2323</sup> AEU per acre is defined as an animal equivalent unit per acre of cropland or acre of land suitable for application of animal manure.<sup>2324</sup>

The regulations require a CAO to submit to the State Conservation Commission a nutrient management plan within one year after the effective date of the Regulations.<sup>2325</sup> For a CAO installed after the effective date of the regulations, a nutrient management plan must be submitted within three months, or before the start of manure operations, whichever is later.<sup>2326</sup> All plans and plan amendments must be developed by certified nutrient management specialists.<sup>2327</sup>

The nutrient management plan must include the following:

- An agricultural operation identification sheet, including—
  - operator's name, address, and telephone number;
  - county(ies) of land included in the plan;
  - watershed(s) of land included in the plan;
  - total acreage of the agricultural operation included in the plan;
  - total acreage of land on which nutrients will be applied;
  - number of AEU's per acre on the agricultural operation; and
  - name(s) of the nutrient management specialists that prepared the plan.<sup>2328</sup>
- Maps or aerial photographs of sufficient scale, identifying—
  - the location and boundaries of the agricultural operation;
  - individual field boundaries under the plan;
  - field number and acreage of each field;
  - the identification of all soil types and slopes on the agricultural operation; and
  - location of areas where manure application may be limited.<sup>2329</sup>
- A summary, identifying nutrient application rates by field or crop group and procedures and provisions for the utilization of proper disposal of excess manure.<sup>2330</sup>
- A determination of the amounts, types and sources of nutrients available to be applied to the soil of the agricultural operation.<sup>2331</sup>

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<sup>2323</sup>Recommended Nutrient Management Regulations, adopted by Nutrient Management Advisory Board, April 19, 1995 § 83.212.

<sup>2324</sup>Id. § 83.201.

<sup>2325</sup>Id. § 83.211(a).

<sup>2326</sup>Id. § 83.211(b).

<sup>2327</sup>Id. § 83.211(e).

<sup>2328</sup>Id. § 83.223(a).

<sup>2329</sup>Id. § 83.201 et seq. § 83.223(b).

<sup>2330</sup>Id. § 83.224.

<sup>2331</sup>Recommended Nutrient Management Regulations, adopted by Nutrient Management Advisory Board, April 19, 1995, § 83.231(a). For method to determine the amount and nutrient content of manure to be applied on the agricultural operation, Id. § 83.231(b).

- A table including the acreage and realistic expected crop yields for each crop group.<sup>2332</sup>
- Nutrient application procedures.<sup>2333</sup>
- A verification of the adequacy of existing erosion and sedimentation control practices on fields, croplands, and pastures.<sup>2334</sup>
- A plan for stormwater runoff controls in animal concentration areas.<sup>2335</sup>
- A reasonable implementation schedule, identifying when the necessary capital improvements and management changes will be made.<sup>2336</sup>

In the preparation of a plan, the nutrient management specialist must review the existence of or potential for sources of water contamination due to the inadequacy of existing manure handling, collection, storage, and spreading practices.<sup>2337</sup> Such sources include but are not limited to—

manure, contaminated water or nutrients, or both, leaving manure storage or animal concentration areas and directly entering surface water or ground water;

the inadequate control of stormwater flow into manure storage facilities, manure storage areas, and animal concentration areas;

manure storage facilities overflowing or maintained at levels above freeboard heights;

manure storage facilities which are inadequately sized for projected manure production and expected application periods;

leaking or unstable manure storage facilities.<sup>2338</sup>

Once the review has been conducted, the specialist must certify<sup>2339</sup> that preparation of the plan was undertaken in compliance with the regulations.

The regulations provide that the following Best Management Practices (BMP's) can be used to protect water quality and to control water in farmstead, manure storage, and animal concentration areas:<sup>2340</sup>

- Manure storage facilities including permanent manure stacking areas.
- Adequate collection of manure from animal concentration areas for use on cropland or for other acceptable uses.
- Diversion of contaminated runoff within animal concentration areas to a storage, lagoon, collection basin, vegetated filter area, or another suitable site or facility.
- Diversion or elimination of contaminated water sources.

<sup>2332</sup>Recommended Nutrient Management Regulations, adopted by Nutrient Management Advisory Board, April 19, 1995 § 83.231 § 83.232(a).

<sup>2333</sup>Id. § 83.234.

<sup>2334</sup>Id. § 83.261(a).

<sup>2335</sup>Id. § 83.261(b).

<sup>2336</sup>Id. § 83.271.

<sup>2337</sup>Id. § 83.251(a).

<sup>2338</sup>Id. § 83.251(a).

<sup>2339</sup>Id. § 83.251(b).

<sup>2340</sup>Id. § 83.251(c).

- Temporary manure stacking areas, provided that they are located outside concentrated waterflow areas and areas where manure application is restricted or prohibited.
- Other appropriate BMP's acceptable to the commission or the delegated conservation district.

The regulations allow an approved nutrient management plan to be transferred to a subsequent owner or operator of an agricultural operation by notifying the commission of the transfer, unless the transfer results in operational changes.<sup>2341</sup>

The regulations provide that for agricultural operations other than CAO's, the plan must specify the following:<sup>2342</sup>

- Estimated amount of the manure to be used.
- Intended reason(s) for the manure usage.
- Alternative manure usage methods such as—
  - land application by known importers;
  - transfer through a manure broker;
  - use on the agricultural operation in a manner other than land application; or
  - marketing through an open advertising system.

**Alabama (region 2).**—Entrusting the administration of the Alabama Fertilizer Law of 1969<sup>2343</sup> to the Commissioner of Agriculture and Industries of Alabama,<sup>2344</sup> the Alabama Legislature provides that the following provisions are applicable to all activities concerning fertilizers:

- All persons who want to sell or offer for sale or exchange any commercial fertilizer must first obtain a fertilizer dealer permit from the commissioner.<sup>2345</sup>
- All persons who want to sell or offer for sale any commercial fertilizer, or sell such fertilizer for importation into Alabama must apply for and obtain from the commissioner a license authorizing the sale of commercial fertilizer.<sup>2346</sup>
- All commercial fertilizers sold in or for importation into Alabama for use in containers must comply with the labeling requirements.<sup>2347</sup>
- All persons who sell or offer for sale in or for importation into Alabama any soil conditioner or soil amendment for which label (or labeling) claims are made must comply with all of the similar requirements applicable to the sale of commercial fertilizers.<sup>2348</sup>

<sup>2341</sup>Recommended Nutrient Management Regulations, adopted by Nutrient Management Advisory Board, April 19, 1995, § 83.333.

<sup>2342</sup>Id. § 83.241.

<sup>2343</sup>Alabama Fertilizer Law of 1969, ALA. CODE § 2-22-1 et seq. (1975 & Supp. 1993).

<sup>2344</sup>Id. § 2-22-3 (1975).

<sup>2345</sup>Id. § 2-22-4. Permit application must be accompanied by \$1 fee and permit expires on September 30 of each year.

<sup>2346</sup>ALA. CODE § 2-22-5. License application must be accompanied by a fee (fee is based upon the number of tons of commercial fertilizer sold in or for importation into Alabama) and expires on September 30 of each year.

<sup>2347</sup>Id. § 2-22-7. For a more detailed description of the labeling requirements, Id.

<sup>2348</sup>Id. § 2-22-8.

- All persons who sell or offer for sale any commercial fertilizer in or for importation into Alabama for use must pay an inspection fee at the rate of no more than \$0.50 per ton.<sup>2349</sup>
- All licensees must furnish the commissioner with a report showing the number of tons of each grade of fertilizer sold in each county in Alabama semiannually.<sup>2350</sup>

The commissioner has the mandatory duty to sample, inspect, and make analyses of and test commercial fertilizers distributed within Alabama.<sup>2351</sup> To carry out his or her duty, the commissioner is authorized to enter upon any public or private premises or carriers to determine compliance with the act.<sup>2352</sup> Moreover, if the analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary plant nutrients (NPK) beyond the tolerances as established by regulations adopted by the State Board of Agriculture and Industries, a penalty as promulgated by the board will be imposed.<sup>2353</sup>

The act provides that the Board of Agriculture and Industries is authorized to—  
 establish standards of classification for commercial fertilizer;  
 define and adopt standards for the sale of specialty fertilizers together with conditions and restrictions under which they may be sold; and  
 establish standards and minimum guarantees for plant nutrients other than nitrogen, phosphorus, and available potassium.<sup>2354</sup>

Moreover, it is authorized to adopt and promulgate reasonable rules and regulations concerning the sale and distribution of commercial fertilizers necessary to carry out the full intent and meaning of the act.<sup>2355</sup>

Any lot or quantity of commercial fertilizer not in compliance with any provisions of the Alabama Fertilizer Law of 1969 or adopted rules and regulations will be subject to suspension from sale, seizure, and condemnation.<sup>2356</sup> Moreover, it should be noted that violations of the act or promulgated rules or regulations will be deemed misdemeanors, and the commissioner can apply to a circuit court for injunctive relief to restrain such violations.<sup>2357</sup>

This act does not restrict or void sales or exchanges of commercial fertilizers between manufacturers, processors, or shipment of fertilizers to manufacturers or processors.<sup>2358</sup>

**Georgia (region 2).**—The Legislature of Georgia enacted two acts pertinent to nutrients management. They are the Georgia Plant Food Act of 1970 and the Georgia Soil Amendments Act of 1976. Each shall be discussed in turn.

<sup>2349</sup>ALA. CODE § 2-22-9 (Supp. 1993).

<sup>2350</sup>Id. § 2-22-10 (1975).

<sup>2351</sup>Id. § 2-22-11(a).

<sup>2352</sup>Id. § 2-22-11(b).

<sup>2353</sup>Id. § 2-22-12.

<sup>2354</sup>Id. § 2-22-15.

<sup>2355</sup>Id. § 2-22-20.

<sup>2356</sup>Id. § 2-22-21.

<sup>2357</sup>Id.

<sup>2358</sup>Id. § 2-22-23.



***The Georgia Plant Food Act of 1970.***—Under the Georgia Plant Food Act of 1970,<sup>2359</sup> the following provisions are applicable to all activities regarding commercial fertilizers in Georgia:

- Each company guaranteeing commercial fertilizer marketed in Georgia must register with the state.<sup>2360</sup>
- All brands and grades of specialty fertilizer offered for sale, sold or distributed in Georgia must be registered.<sup>2361</sup>
- Any person who wants to become a registrant must first obtain a license before engaging in such business.<sup>2362</sup>
- All nonresident registrants must comply with the Georgia Department of Agriculture Registration, License, and Permit Act before selling or offering for sale their products in Georgia.<sup>2363</sup>
- All commercial fertilizers distributed in containers must comply with labeling requirements.<sup>2364</sup>
- Registrants must pay an inspection fee at the rate of \$0.30 per ton.<sup>2365</sup>
- All registrants selling commercial fertilizers must furnish the Commissioner of Agriculture with a confidential statement of the net tonnage of each grade of fertilizer sold by them.<sup>2366</sup>
- The minimum nutrient content must be satisfied.<sup>2367</sup> Superphosphate cannot contain less than 18% available phosphoric acid. Fixed fertilizer cannot contain less than a total of 20% nitrogen, available phosphoric acid, and potash.<sup>2368</sup>

The commissioner is required to sample, inspect, make analysis of, and test all commercial fertilizers distributed in Georgia. To carry out his or her duty, the commissioner is authorized to enter upon any public or private premises or carriers to determine compliance with the act.<sup>2369</sup> Moreover, if an official sample shows that a commercial fertilizer is deficient in one or more of its guaranteed primary plant nutrients (NPK) beyond the investigational allowances set forth, a penalty of 10 percent of the commercial value plus two times the difference in the found commercial value and the guaranteed commercial value will be imposed.<sup>2370</sup>

The commissioner is authorized to prescribe and enforce rules and regulations regarding the distribution of commercial fertilizers and soil conditioners as deemed necessary to effectuate the act. In the event violation of the act or any promulgated rule or regulation takes place, the commissioner can issue and enforce a *stop sale*,

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<sup>2359</sup>Georgia Plant Food Act of 1970, GA. CODE ANN. § 2-12-1 through 2-12-22 (1990).

<sup>2360</sup>Id. § 2-12-4(a).

<sup>2361</sup>Id. § 2-12-4(b).

<sup>2362</sup>Id. § 2-12-4(c). A new registrant is required to pay a license fee of \$50, and thereafter, an annual fee based on the tonnage volume.

<sup>2363</sup>Id. § 2-12-5.

<sup>2364</sup>Id. § 2-12-6.

<sup>2365</sup>Id. § 2-12-8.

<sup>2366</sup>Id. § 2-12-9.

<sup>2367</sup>Id. § 2-12-10.

<sup>2368</sup>Id. Slag blends and complete fertilizers branded for use on tobacco are exempted; however, such blends must contain not less than 15 percent plant food and tobacco fertilizers must be labeled in accordance with regulations covering tobacco fertilizers. Id.

<sup>2369</sup>Id. § 2-12-7.

<sup>2370</sup>Id. § 2-12-11.

*use, or removal order.*<sup>2371</sup> Moreover, any lot or quantity of commercial fertilizer not in compliance with any provisions of the Georgia Plant Food Act of 1970 or any adopted rule or regulation will be subject to suspension from sale, seizure, and condemnation.<sup>2372</sup>

This act does not restrict or void sales or exchanges of commercial fertilizers between manufacturers, processors, or shipment of fertilizers to manufacturers or processors.<sup>2373</sup>

***Georgia Soil Amendments Act of 1976.***—Under the Georgia Soil Amendments Act of 1976,<sup>2374</sup> which is administered by the Commissioner of Agriculture,<sup>2375</sup> the following provisions are applicable to activities involving soil amendments:

- Every soil amendment distributed in Georgia must be registered with the commissioner.<sup>2376</sup>
- Each registrant must keep accurate records of his or her sales and file semiannual reports with the commissioner.<sup>2377</sup>
- Every soil amendment container must be labeled on the face or side, conspicuously showing—
  - the product name,
  - a statement of claim or purpose,
  - adequate directions for use,
  - the net weight or volume, and
  - the name and address of the registrant.<sup>2378</sup>

The commissioner is authorized to—  
 enter upon public or private premises for the purpose of inspecting, sampling, or analyzing soil amendment to determine compliance with this act;<sup>2379</sup> and  
 to promulgate and adopt rules and regulations as may be necessary to enforce this act.<sup>2380</sup>

The act prohibits the following activities:<sup>2381</sup>

- Unregistered soil amendment.
- Unlabeled soil amendment.
- Misbranded soil amendment.
- Adulterated soil amendment.
- Noncompliance with a stop, sale, use, or removal order.

<sup>2371</sup>Georgia Plant Food Act of 1970, GA. CODE ANN. § 2-12-19.

<sup>2372</sup>Id. § 2-12-20.

<sup>2373</sup>Id. § 2-12-16.

<sup>2374</sup>Id. § 2-17-71 et seq. (1982).

<sup>2375</sup>Id. § 2-17-72.

<sup>2376</sup>Id. § 2-17-73.

<sup>2377</sup>Id. § 2-17-75.

<sup>2378</sup>Id. § 2-17-76.

<sup>2379</sup>Id. § 2-17-78.

<sup>2380</sup>Id. § 2-17-80.

<sup>2381</sup>Id. § 2-17-79.

- Noncompliance with the semiannual reporting requirement.

The commissioner is authorized to issue and enforce a stop sale, use, or removal order to the owner or custodian of any lot of soil amendment that does not comply with the Soil Amendments Act.<sup>2382</sup> The commissioner can also petition the Superior Court of the appropriate county for an injunction restricting the violation or threatened violation of this act.<sup>2383</sup> Violation of any provision of this act or regulations adopted pursuant to this act constitutes a misdemeanor.<sup>2384</sup>

**Arkansas (region 3).**—Under the Arkansas Fertilizers law,<sup>2385</sup> the following provisions are applicable to all activities regarding fertilizers:

- All manufacturers, jobbers, and manipulators of commercial fertilizers and of fertilizer materials to be used in the manufacture of fertilizer must be registered annually with the State Plant Board before selling or offering for sale in Arkansas.<sup>2386</sup>
- Before selling or offering for sale complete fertilizer or fertilizer materials, all persons, companies, manufacturers, dealers, or agents must brand, print or attach to each bag or other container a set of statements.<sup>2387</sup>
- Commercial fertilizer or fertilizer material offered for sale in Arkansas must meet the guaranteed analysis requirement. If there is a deficiency of at least 3 percent but not more than 5 percent, the violating person will be liable for the actual deficiency as shown by the official analysis. However, if the deficiency is over 5 percent, then the penalty will be three times the amount of the total deficiency.<sup>2388</sup>
- All manufacturers and manipulators or agents who have registered their brands in compliance with the registration requirement must furnish the State Plant Board with a monthly tonnage report.<sup>2389</sup>

The Arkansas Fertilizers law by no means—

restricts or prohibits sales of superphosphate or any other fertilizer materials to one another by importers, manufacturers, or manipulators who mix materials for sale, or

prevents the free and unrestricted shipment of materials to manufacturers who have registered their brands.<sup>2390</sup>

After public hearing, the board can promulgate a list of approved ratios and minimum grades or grades of mixed commercial fertilizers sufficient to meet the agricultural needs of the state. However, specialty fertilizers will be exempt from the ratio and minimum grade or grade requirements. A specialty fertilizer is any fertilizer distributed primarily for nonfarm use (such as for home gardens, lawns,

<sup>2382</sup>GA. CODE ANN. § 2-17-81.

<sup>2383</sup>Id. § 2-17-82.

<sup>2384</sup>Id. § 2-17-83.

<sup>2385</sup>ARK. CODE ANN. § 2-19-201 through 2-19-210 (Michie 1987 & Supp. 1991).

<sup>2386</sup>Id. § 2-19-202 (Michie Supp. 1991).

<sup>2387</sup>Id. § 2-19-205 (Michie 1987).

<sup>2388</sup>Id. § 2-19-206.

<sup>2389</sup>Id. § 2-19-209 (Michie 1987).

<sup>2390</sup>Id. § 2-19-204 (Michie 1987).

shrubs, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries), including fertilizers used for research or experimental purposes.<sup>2391</sup>

The State Plant Board is authorized to establish rules and regulations regarding the enforcement of the Arkansas Fertilizers law and regarding inspection, analysis, and sale of fertilizer or fertilizer material. The board can also stop the sale of any fertilizer or fertilizer material when the sale is in violation of the Arkansas Fertilizers law or the board's promulgated rules or regulations.<sup>2392</sup>

In addition to the Fertilizers law, the Arkansas Legislature also enacted the Soil Amendment Act of 1977,<sup>2393</sup> to be administered by the State Plant Board,<sup>2394</sup> after acknowledging that the "introduction of certain substances into the soil . . . endangers the soil of Arkansas, and poses a severe threat to the health, safety, and welfare of the people of Arkansas."<sup>2395</sup> Soil amendment is defined to mean any substance that is intended to improve the physical, chemical, or other characteristics of the soil or improve crop production, except commercial fertilizers, agricultural liming materials, agricultural gypsum, unmanipulated animal manure, topsoil, unmanipulated vegetable manure, pesticides, and herbicides.<sup>2396</sup>

The Soil Amendment Act requires that each container of a soil amendment must comply with the labeling requirement<sup>2397</sup> and each soil amendment product must be registered with the board before distribution.<sup>2398</sup> All registrants must—  
pay an inspection fee on all registered products,  
keep records of sales, and  
furnish monthly tonnage reports to the board.<sup>2399</sup>

Moreover, the act specifies that a person violates this act if he or she—  
distributes a soil amendment if it is not registered and not labeled;  
  
distributes a misbranded or adulterated soil amendment;  
  
fails to comply with a stop-sale, use, or removal order; and  
fails to pay the inspection fee.<sup>2400</sup>

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<sup>2391</sup>ARK. CODE ANN. § 2-19-202 (Michie Supp. 1991).

<sup>2392</sup>Id. § 2-19-210 (Michie 1987).

<sup>2393</sup>Id. § 2-19-401 through 2-19-414.

<sup>2394</sup>Id. § 2-19-404.

<sup>2395</sup>Acts 1977, No. 377, § 15.

<sup>2396</sup>Id. § 2-19-402(1).

<sup>2397</sup>Id. § 2-19-407.

<sup>2398</sup>Id. § 2-19-408.

<sup>2399</sup>Id. § 2-19-410.

<sup>2400</sup>Id. § 2-19-411.

**Mississippi (region 3).**—Under the Mississippi Soil and Plant Amendment Law of 1978,<sup>2401</sup> which is administered by the commissioner,<sup>2402</sup> the following provisions are applicable to fertilizing material and additives in Mississippi:

- All containers or accompany bulk shipments of soil or plant amendments must comply with the labeling requirement.<sup>2403</sup>
- Each separately identified product must be registered before distribution, unless the brand of soil or plant amendment is already registered under this act by another person, provided that the label and labeling do not differ in any respect.<sup>2404</sup> The commissioner and state chemist are authorized to refuse or cancel registration.<sup>2405</sup>
- All registrants must pay an inspection fee and file a tonnage report with the commissioner.<sup>2406</sup>

The commissioner and state chemist have the duty to sample, inspect, make analyses of, and test soil or plant amendments distributed within Mississippi.<sup>2407</sup> The methods of analyses and sampling must be those adopted by the state chemist.<sup>2408</sup> If the analyses show there is a deficiency in the guaranteed analysis beyond the "investigational allowances" as provided by the regulation, the registrant will be subject to a penalty three times the commercial value of such deficiency.<sup>2409</sup> Moreover, the commissioner and state chemist are authorized to adopt and enforce rules and regulations necessary to carry out the Mississippi Soil and Plant Amendment law.<sup>2410</sup>

The act prohibits distribution of misbranded or adulterated soil or plant amendments.<sup>2411</sup>

**Wisconsin (region 4).**—Under the Wisconsin Fertilizer law, the following provisions are applicable to the distribution of fertilizer:

- Each packaged fertilizer (including packaged custom-mixed fertilizer) must comply with the labeling requirement before distribution.<sup>2412</sup>
- Each person must obtain annual license before manufacturing or distributing fertilizer. However, the licensing requirement does not apply to persons who distribute only—

fertilizer material to manufacturers for further manufacturing;

packaged fertilizer in the original container of a licensed manufacturer or distributor as packaged and labeled by him; and

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<sup>2401</sup>Mississippi Soil and Plant Amendment Law of 1978, MISS. CODE ANN. § 69-24-1 et seq. (1991).

<sup>2402</sup>Id. § 69-24-3.

<sup>2403</sup>Id. § 69-24-7.

<sup>2404</sup>Id. § 69-24-9.

<sup>2405</sup>Id. § 69-24-11.

<sup>2406</sup>Id. § 69-24-13.

<sup>2407</sup>Id. § 69-24-15.

<sup>2408</sup>Id. § 69-24-15.

<sup>2409</sup>Id. § 69-24-17.

<sup>2410</sup>Id. § 69-24-27.

<sup>2411</sup>Id. § 69-24-19, § 69-24-21.

<sup>2412</sup>WIS. STAT. ANN. § 94.64(2) (West 1990 & Supp. 1993).

bulk fertilizer obtained for resale purpose from a licensee and labeled as required.<sup>2413</sup>

- All inspection and research fees must be paid.<sup>2414</sup> Research fees will be collected into a fertilizer research fund that will be used for research on soil management, soil fertility, and plant nutrition problems and for research on ground water programs, which may be related to fertilizer usage; for dissemination of the research results; and for other designated activities promoting the correct usage of fertilizer materials.<sup>2415</sup> However, the payment of inspection and research fees does not apply to sales or exchanges of fertilizer between manufacturers who mix fertilizer material for sale.<sup>2416</sup>
- Mixed fertilizer must have the sum of the guarantees for nitrogen, available phosphoric acid and soluble potash totaling 24 percent or more, unless—
  - the mixed fertilizer is exempted from this requirement by the department;
  - or
  - the mixed fertilizer is a nonagricultural or special use fertilizer and the person secures a permit from the Wisconsin Department of Agriculture authorizing its distribution as nonagricultural or special-use fertilizer.<sup>2417</sup>
- In addition to the filing of tonnage reports for inspection and research fees, each licensee must furnish to the department a report of the tonnage of each grade of fertilizer sold annually.<sup>2418</sup>

The department is authorized to establish rules and regulations regarding the enforcement of the Wisconsin fertilizer law and regarding inspection, sample, and analysis of distribution of fertilizer. Fertilizer that is not in compliance with the fertilizer law will be subject to seizure and disposition.<sup>2419</sup>

In addition to the fertilizer law, the Wisconsin Legislature also enacted a number of provisions pertaining to soil and plant additives.<sup>2420</sup> Under this law, the following provisions are applicable to manufacturing and distribution of soil or plant additives:

- Every soil or plant additive must comply with the labeling requirement before its manufacture or distribution.<sup>2421</sup>
- Each person must obtain an annual license from the department before manufacturing or distributing a soil or plant additive.<sup>2422</sup>
- Each person must obtain a separate permit from the department for the distribution of each soil or plant additive. However, the permit requirement does not apply to—
  - a person who distributes a soil or plant additive for which a permit has been issued to a permit holder; or

<sup>2413</sup>WIS. STAT. ANN. § 94.64(3) (West 1990 & Supp. 1993).

<sup>2414</sup>Id. § 94.64.

<sup>2415</sup>Id. § 94.64(8m) (West 1990).

<sup>2416</sup>Id. § 94.64(6).

<sup>2417</sup>Id. § 94.64(3m) (West 1990 & Supp. 1993).

<sup>2418</sup>Id. § 94.64(5).

<sup>2419</sup>Id. § 94.64(5).

<sup>2420</sup>Id. § 94.65 (West 1990 & Supp. 1993)

<sup>2421</sup>Id. § 94.65(5) (West 1990).

<sup>2422</sup>Id. § 94.65 (West 1990 & Supp. 1993).

land-spreading of sewage sludge under a pollutant discharge elimination system permit issued by the Wisconsin Department of Natural Resources.<sup>2423</sup>

- Each fertilizer permit holder must file with the department a tonnage report of fertilizer distribution annually.<sup>2424</sup>

The Wisconsin Fertilizer law provides that, as a condition to the issuance of a permit, the department can require the applicant to substantiate—  
the efficacy and usefulness of the soil or plant additive if applied under the conditions recommended by the applicant; and  
the truthfulness of any statement made on the proposed soil or plant additive label or in a permit application.<sup>2425</sup>

In addition to other powers, the department is authorized to promulgate rules to implement and administer the Wisconsin Fertilizer law.<sup>2426</sup>

**Iowa (region 5).**—The Iowa Legislature enacted the Iowa Fertilizer Law,<sup>2427</sup> under which it designated the administration of the act to the Secretary of Agriculture.<sup>2428</sup> The following provisions are applicable to all activities regarding commercial fertilizers and soil conditioners:

- All persons who manufacture, mix, blend, or mix to customer's order any fertilizer or soil conditioner in Iowa must first obtain a license from the Secretary.<sup>2429</sup> Such license application must be accompanied by a \$10 fee and the license must be renewed annually.<sup>2430</sup> Only those with licenses are permitted to add pesticides to commercial fertilizers.<sup>2431</sup>
- All brands and grades of commercial fertilizers and soil conditioners must be registered before being offered for sale, sold, or distributed in Iowa. Commercial fertilizer formulated according to special specifications furnished by a consumer is exempted from the registration requirement; however, it must be labeled accordingly.<sup>2432</sup>
- All commercial fertilizers offered for sale, sold, or distributed in containers must comply with the labeling requirement.<sup>2433</sup>
- Licensees must pay to the secretary inspection fees of not more than \$0.20 per ton for all commercial fertilizers and soil conditioners sold or distributed in Iowa.<sup>2434</sup>
- The minimum nutrient contents must be satisfied. Phosphate fertilizer cannot contain less than 18 percent available phosphoric acid. Nitrogen fertilizer cannot contain less than 15 percent of total nitrogen. Potash fertilizer cannot contain less than 15 percent of soluble potash. Mixed fertilizer cannot contain

<sup>2423</sup>WIS. STAT. ANN. § 94.65(3) (West 1990).

<sup>2424</sup>Id. § 94.65(6) (West 1990 & Supp. 1993).

<sup>2425</sup>Id. § 94.65(4) (West 1990).

<sup>2426</sup>Id. § 94.65(9).

<sup>2427</sup>Iowa Fertilizer Law, IOWA CODE ANN. § 200.1 et seq. (West 1987 & Supp. 1993).

<sup>2428</sup>Id. § 200.2 (West 1987).

<sup>2429</sup>Id. § 200.2 (West 1987).

<sup>2430</sup>Id. § 200.4 (West Supp. 1993).

<sup>2431</sup>Id. § 200.7 (West 1987).

<sup>2432</sup>Id. § 200.5 (West 1987).

<sup>2433</sup>Id. § 200.6.

<sup>2434</sup>Id. § 200.8 (West Supp. 1993).

less than total 20 percent of total nitrogen, available phosphoric acid, and soluble potash.<sup>2435</sup>

The act prohibits individuals from manufacturing, offering for sale, or selling in Iowa, any commercial fertilizer or soil conditioners that contain any substance used as a filler that is injurious to crop growth or deleterious to the soil, or used to defraud the purchaser.<sup>2436</sup>

The act creates a fertilizer fund composed of fees collected for licenses and inspection, not including those fees collected for deposit in the agriculture management account of the ground water protection fund.<sup>2437</sup>

The secretary is required to sample, inspect, make analysis of, and test all commercial fertilizers distributed in Iowa.<sup>2438</sup> To carry out this duty, the secretary is authorized to enter upon any public or private premises or carriers to determine compliance of the act.<sup>2439</sup> The secretary is also authorized to refuse to register or cancel the registration of any commercial fertilizer or soil conditioner or license if the registrant or licensee has used fraudulent or deceptive practices, or willfully violates any provisions of this act or rules and regulations promulgated.<sup>2440</sup>

The secretary is authorized to adopt rules setting forth minimum general safety standards for the design, construction, location, installation, and operation of equipment for storage, handling, transportation by tank truck or tank trailer, and use of anhydrous ammonia. Moreover, the secretary is authorized to adopt and promulgate reasonable rules necessary to carry out the full intent and meaning of the act.<sup>2441</sup>

In the event violation of the act or any promulgated rule or regulation takes place, the secretary can issue and enforce a "stop sale, use or removal" order.<sup>2442</sup> Moreover, any lot or quantity of commercial fertilizer not in compliance with any provisions of the Iowa Fertilizer Law or any promulgated rules or regulations will be subject to suspension from sale, seizure, and condemnation.<sup>2443</sup>

This act does not restrict or void sales or exchanges of commercial fertilizers between manufacturers, processors, or shipment of fertilizers to manufacturers or processors.<sup>2444</sup>

**Nebraska (region 5).**—The Nebraska Commercial Fertilizer and Soil Conditioner Act,<sup>2445</sup> administered by the Director of Agriculture, requires:

- All commercial fertilizer and soil conditioner, except custom-blended products, to be registered before its distribution.<sup>2446</sup>

<sup>2435</sup>IOWA CODE ANN. 200.20 (West 1987).

<sup>2436</sup>Id. § 200.11 (West 1987).

<sup>2437</sup>Id. § 200.9 (West Supp. 1993).

<sup>2438</sup>Id. § 200.10 (West 1987).

<sup>2439</sup>Id.

<sup>2440</sup>Id. § 200.15.

<sup>2441</sup>Id. § 200.14.

<sup>2442</sup>Id. § 200.16.

<sup>2443</sup>Id. § 200.17.

<sup>2444</sup>Id. § 200.19.

<sup>2445</sup>Nebraska Commercial Fertilizer and Soil Conditioner Act, NEB. REV. STAT. § 81-2,162.01 through 81-2,162.27 (1987).

<sup>2446</sup>Id. § 81-2,162.03(1).



- All commercial fertilizer and soil conditioner, except custom-blended products, to comply with the labeling requirement.<sup>2447</sup>
- All commercial fertilizer and soil conditioner activities, except custom-blended products, to satisfy the inspection fee requirement.<sup>2448</sup>

For commercial fertilizer, superphosphate fertilizer cannot contain less than 18 percent available phosphoric acid. Mixed fertilizer cannot contain less than total 20 percent of total nitrogen, available phosphoric acid, and soluble potash (except for fertilizer containing 25 percent or more of its nitrogen in water insoluble form, and 18 percent or more of its total nitrogen, available phosphoric acid, and soluble potash). This requirement does not apply to specialty fertilizers.<sup>2449</sup>

Among other duties and powers, the director has the mandatory duty to sample, inspect, make analysis of, and test commercial fertilizers and soil conditioners in Nebraska.<sup>2450</sup> If noncompliance is determined, the director may issue and enforce a *stop sale, use, or removal* order to the owner or custodian of any lot of commercial fertilizer or soil conditioner.<sup>2451</sup> Any lot of commercial fertilizer or soil conditioner not in compliance with the act is subject to seizure on complaint of the director.<sup>2452</sup> If the court determines that the commercial fertilizer or soil conditioner is in violation of the act, it may order the condemnation of the commercial fertilizer or soil conditioner. However, before condemning the commercial fertilizer or soil conditioner product, the court must give the claimant an opportunity to apply to the court for release of the commercial fertilizer or soil conditioner or for permission to bring it into compliance with the act.<sup>2453</sup>

The director is authorized to prescribe rules and regulations regarding the distribution of commercial fertilizers and soil conditioners.<sup>2454</sup> Moreover, the act creates the Fertilizers and Soil Conditioners Administrative Fund, which is used to pay for the expenses of administering the act.<sup>2455</sup>

The act specifically prohibits anyone from distributing misbranded<sup>2456</sup> or adulterated commercial fertilizer or soil conditioner.<sup>2457</sup>

**New Mexico (region 6).**—The New Mexico Legislature enacted the New Mexico Fertilizer Act,<sup>2458</sup> under which it designated the administration of the act to the Board of Regents of the New Mexico State University through the New Mexico Department of Agriculture.<sup>2459</sup> Furthermore, to enforce the New Mexico Fertilizer Act, the board is authorized to prescribe and, after public hearing following due public notice, adopt the regulations relating to the distribution of commercial fertilizers and soil conditioners.<sup>2460</sup>

<sup>2447</sup>NEB. REV. STAT. § 81-2,162.04, § 81-2,162.05.

<sup>2448</sup>Id. § 81-2,162.06.

<sup>2449</sup>Id. § 81-2,162.08.

<sup>2450</sup>Id. § 81-2,162.07.

<sup>2451</sup>Id. § 81-2,162.14.

<sup>2452</sup>Id. § 81-2,162.15..

<sup>2453</sup>Id.

<sup>2454</sup>Id. § 81-2,162.12.

<sup>2455</sup>Id. § 81-2,162.27.

<sup>2456</sup>Id. § 81-2,162.25.

<sup>2457</sup>Id. § 81-2,162.26.

<sup>2458</sup>New Mexico Fertilizer Act, NEW MEXICO. STAT. ANN. § 76-11-1 et seq. (Michie 1978).

<sup>2459</sup>Id. § 76-11-2.

<sup>2460</sup>Id. § 76-11-13.

The act requires each brand and grade of commercial fertilizer and each soil conditioner product to be registered before being distributed in New Mexico.<sup>2461</sup> Moreover, all commercial fertilizers distributed in New Mexico in containers must have, placed on or attached to the container, a label setting forth in clearly legible and conspicuous form a set of information, including—

- net weight or other measure;
- brand and grade;
- guaranteed analysis; and
- name and address of registrant.<sup>2462</sup>

Each brand of soil conditioner distributed in New Mexico is also required to be accompanied by a legible label.<sup>2463</sup> In addition to these requirements, the act prohibits persons from distributing misbranded fertilizer or soil conditioner.<sup>2464</sup> The fertilizer or soil conditioner is misbranded if—<sup>2465</sup>

- its labeling is false or misleading in any way;
- it is distributed under the name of another fertilizer or soil conditioner product; or
- it is not labeled as required by the act.

The act provides that the person transacting, distributing, or selling commercial fertilizer or soil conditioner to a nonregistrant must mail the department a report showing the information, such as—

- the county of the consignee;
- the amounts in tons of each grade of commercial fertilizer and each soil conditioner product; and
- the form in which the fertilizer or soil conditioner was distributed.<sup>2466</sup>

The New Mexico Department of Agriculture is required to sample, inspect, make analyses, and test commercial fertilizers and soil conditioners distributed within New Mexico.<sup>2467</sup> The department must adopt the methods of analysis and sampling from sources such as the Association of Official Agricultural Chemists.<sup>2468</sup> Furthermore, to determine compliance with the act and other regulations, the department is authorized to enter upon private or public premises or carriers during the regular business hours.<sup>2469</sup> If noncompliance is determined, the department may issue and enforce a *stop sale, use, or removal* order to the owner or custodian of any lot of commercial fertilizer or soil conditioner.<sup>2470</sup> Any lot of commercial fertilizer or soil conditioner that is not in compliance with the act is subject to

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<sup>2461</sup>NEW MEXICO, STAT. ANN. § 76-11-4(A).

<sup>2462</sup>Id. § 76-11-5(A).

<sup>2463</sup>Id. § 76-11-5(D).

<sup>2464</sup>Id. § 76-11-10.

<sup>2465</sup>Id.

<sup>2466</sup>Id. § 76-11-11.

<sup>2467</sup>Id. § 76-11-7(A).

<sup>2468</sup>Id. § 76-11-7(B).

<sup>2469</sup>Id. § 76-11-7(A).

<sup>2470</sup>Id. § 76-11-16.

seizure on complaint of the department.<sup>2471</sup> If the court determines that the commercial fertilizer or soil conditioner is in violation of the act, it may order the condemnation of the commercial or soil conditioner.<sup>2472</sup> However, before condemning the commercial fertilizer or soil conditioner product, the court must give the claimant an opportunity to apply to the court for release of the commercial fertilizer or soil condition or for permission to bring it into compliance with the act.<sup>2473</sup>

**Texas (region 6 & 7).**—Under the Texas Commercial Fertilizer law,<sup>2474</sup> a substance is considered commercial fertilizer, thereby subject to this law, if it is—

- a fertilizer material,
- mixed fertilizer,
- customer-formula fertilizer, or
- another substance, material, or element, including a pesticide, which is intended for use as an ingredient or component of a mixture of materials which is used to promote plant growth.

However, unprocessed, unpackaged, or unmanipulated lime, limestone, marl, or gypsum is not considered a commercial fertilizer, and thus is not subject to the Texas Commercial Fertilizer law.<sup>2475</sup> Under the Texas Commercial Fertilizer law, which is under the administration of the Texas Feed and Fertilizer Control Service,<sup>2476</sup> the following provisions are applicable to all activities relating to fertilizers in Texas:

- Distribution of commercial fertilizer, each person must obtain a valid current permit issued by the service.<sup>2477</sup>
- Manufacturing or distributing commercial fertilizer, each person must register the fertilizer with the service. Such person is not required to register the fertilizer if such fertilizer has been registered by another person.<sup>2478</sup>
- Each container of commercial fertilizer distributed, other than customer-formula fertilizer (which is subject to a different labeling requirement),<sup>2479</sup> must satisfy the label requirement.<sup>2480</sup>
- Registrant of a commercial fertilizer must pay an inspection fee to the service. A person is not required to pay an inspection fee on compost.<sup>2481</sup>
- The person who is responsible to pay an inspection fee must file quarterly tonnage reports with the service, which must be accompanied by payment of the inspection fee.<sup>2482</sup>

<sup>2471</sup>NEW MEXICO. STAT. ANN. § 76-11-17(A).

<sup>2472</sup>Id. § 76-11-17(B).

<sup>2473</sup>Id. § 76-11-17(C).

<sup>2474</sup>TEXAS AGRIC. CODE ANN. § 63-001 et seq. (West 1995).

<sup>2475</sup>Id. § 63.002.

<sup>2476</sup>Id. § 63.003.

<sup>2477</sup>Id. § 63.031.

<sup>2478</sup>Id. § 63.031. For application process for registration, Id. § 63.032.

<sup>2479</sup>Id. § 63.053.

<sup>2480</sup>Id. § 63.051.

<sup>2481</sup>Id. § 63.071.

<sup>2482</sup>Id. § 63.072.

However, the Texas Commercial Fertilizer law does not:<sup>2483</sup>

- Restrict or void the sale of a commercial fertilizer by an importer, manufacturer, or manipulator to an importer, manufacturer, or manipulator who mixes fertilizer for distribution.
- Apply to the mixing, milling, or processing of a material produced by a purchaser of commercial fertilizer or acquired by the purchaser from a source other than the person who mixed or processed the material.

The service is required to do the following:

- To prescribe, by rule, procedures for sampling and analyses of commercial fertilizers.<sup>2484</sup>
- To deposit all fees collected in the same manner as other local institutional funds of the Texas A&M University System. The fees will be set apart as a special fund to be known as the Texas Fertilizer Control Fund.<sup>2485</sup>
- To issue a stop-sale order if it believes that a commercial fertilizer is being distributed in violation of a provision of the Texas Commercial Fertilizer law.<sup>2486</sup> If violation is determined, the service must petition the court of competent jurisdiction for an order to condemn and confiscate the fertilizer.<sup>2487</sup>

The service is authorized to:

- Adopt rules regarding the distribution and standards of commercial fertilizers that the service finds necessary to effectuate the intent and meaning of the Texas Commercial Fertilizer law.<sup>2488</sup>
- Enter upon public and private premises to inspect and take samples from fertilizer found during that inspection.<sup>2489</sup>
- Sue in the name of the director, or request a prosecuting attorney or the attorney general to sue to enjoin the noncompliant activity.<sup>2490</sup>

However, a person who is aggrieved by the service's order or ruling may appeal to the court of competent jurisdiction, which will hear the case de novo.<sup>2491</sup>

**Idaho (region 8).**—Under the Idaho Commercial Fertilizer Law of 1967,<sup>2492</sup> the following provisions are applicable to all activities regarding fertilizers:

- Each brand and grade of commercial fertilizer must be registered before being distributed in Idaho.<sup>2493</sup> The Department of Agriculture must examine the registration application form and labels for conformance with the requirement of the act before issuing a certificate of registration.<sup>2494</sup>

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<sup>2483</sup>TEXAS AGRIC. CODE ANN. § 63.006.

<sup>2484</sup>Id. § 63.092.

<sup>2485</sup>Id. § 63.075.

<sup>2486</sup>Id. § 63.121.

<sup>2487</sup>Id. § 63.122.

<sup>2488</sup>Id. § 63.004.

<sup>2489</sup>Id. § 63.091.

<sup>2490</sup>Id. § 63.124.

<sup>2491</sup>Id. § 63.128.

<sup>2492</sup>IDAHO CODE § 22-601 et seq. (1977 & Supp. 1994).

<sup>2493</sup>Id. § 22-605 (1977).

<sup>2494</sup>Id. § 22-606.

- In addition to the registration fee, each person, firm or corporation engaged in the manufacture or sale, or both, of any commercial fertilizer must pay to the director of the department an inspection fee.<sup>2495</sup>
- Any commercial fertilizer distributed in containers must comply with the labeling requirement set forth in the act.<sup>2496</sup>
- Each person who is responsible for the payment of inspection fees for any commercial fertilizer sold in Idaho must report to the department the number of tons of such commercial fertilizer sold within 6 months of the report's due date.<sup>2497</sup>

The department has the following mandatory powers and duties:

- To administer, enforce and carry out the provisions of this act, and to adopt rules necessary to carry out the purpose of the act.<sup>2498</sup>
- To inspect, sample, make analyses of, and test commercial fertilizers distributed within Idaho to determine compliance with the act. The methods of sampling and analyses must be those adopted by the department.<sup>2499</sup>
- To publish information annually concerning the distribution of any commercial fertilizer and results of analyses based on official samples as compared with the guaranteed analyses.<sup>2500</sup>

The act provides that if the analysis shows that any commercial fertilizer falls short of the guaranteed analysis of any plant nutrient or micro-nutrient or total nutrients, a penalty will be assessed in favor of the department at the rate of three times the value of the deficiency when the deficiency exceeds the tolerances established by regulations. However, each party may appeal to the court of competent jurisdiction for a judgment.<sup>2501</sup>

Noncompliant lots of commercial fertilizers will be subject to seizure on complaint of the department to a court of competent jurisdiction. If the court finds violation, such fertilizer must be disposed of. However, before ordering disposition of the noncompliant fertilizers, the court must give claimant an opportunity to apply to the court for release of the fertilizer or for permission to process or relabel to bring it into compliance with this act.<sup>2502</sup>

**Utah (region 8).**—Under the Utah Fertilizer act,<sup>2503</sup> the following provisions are applicable to all commercial fertilizer or soil amendments sold or distributed within Utah:

- Each brand and grade of commercial fertilizer or soil amendment must be registered in the name of the person whose name appears on the label before being distributed. However, the registration requirement does not apply if—  
     commercial fertilizer has already been registered by another person,  
     provided that the label does not differ in any respect; or

<sup>2495</sup>IDAHO CODE § 22-608.

<sup>2496</sup>Id. § 22-607.

<sup>2497</sup>Id. § 22-609.

<sup>2498</sup>Id. § 22-604 (Supp. 1994).

<sup>2499</sup>Id. § 22-610 (1977).

<sup>2500</sup>Id. § 22-615.

<sup>2501</sup>Id. § 22-611.

<sup>2502</sup>Id. § 22-617.

<sup>2503</sup>UTAH CODE ANN. § 4-13-1 et seq. (Michie 1995).

commercial fertilizer is formulated by a consumer before mixing, but is required to register the name under which the business of blending or mixing is conducted.<sup>2504</sup>

- Each container of specialty commercial fertilizer distributed must bear a label setting forth its net weight, brand, and grade, guaranteed analyses, the name and address of the registrant, and the lot number.
- Each bulk shipment of commercial fertilizer distributed must be accompanied by a printed or written statement setting forth similar information. Each sale of packaged mixed fertilizer must be labeled to show its net weight, guaranteed analysis, lot number, and the name and address of the distributor.
- Moreover, each container of soil amendment must bear the same information as required for a container of specialty commercial fertilizer, and if a soil amendment is distributed in bulk, it must provide the same information as required for bulk shipment of commercial fertilizer.<sup>2505</sup>
- The Utah Department of Agriculture is required to periodically sample, inspect, analyze, and test commercial fertilizer and soil amendments distributed within Utah. The methods of analyses and sampling must be those adopted by the state chemist.<sup>2506</sup> If the analyses show there is a deficiency in the guaranteed analysis beyond the *investigational allowances*, as provided by the regulation, the registrant will be subject to a penalty three times the commercial value of such deficiency.<sup>2507</sup>
- The department is authorized to issue a stop-sale order if it believes that a commercial fertilizer is being distributed in violation of a provision of the Utah Fertilizer law. If violation is determined, the department must petition the court of competent jurisdiction for an order to condemn and confiscate the fertilizer. If the court orders condemnation of the fertilizer or soil amendment, the violator will bear court costs, fees, storage, and other expenses.<sup>2508</sup>

However, it should be noted that the Utah Fertilizer Act by no means restricts or voids sales or exchanges of commercial fertilizers or soil amendments between manufacturers or importers.<sup>2509</sup>

**Oregon (region 9).**—Before the selling or distribution of fertilizers, the Oregon Fertilizers law,<sup>2510</sup> to be administered and enforced by the Department of Agriculture,<sup>2511</sup> imposes different labeling requirements for fertilizers in package or in bulk,<sup>2512</sup> agricultural amendments,<sup>2513</sup> and agricultural seed minerals,<sup>2514</sup> which among other things, require the showing of the guaranteed analysis (total nitrogen, available phosphoric acid, available potash).

Each brand and grade of fertilizer, agricultural minerals and agricultural amendment, whether in package or in bulk, except custom mix, must be registered

<sup>2504</sup>UTAH CODE ANN. § 4-13-3.

<sup>2505</sup>Id. § 4-13-4.

<sup>2506</sup>Id. § 4-13-5.

<sup>2507</sup>Id. § 4-13-6.

<sup>2508</sup>Id. § 4-13-8.

<sup>2509</sup>Id. § 4-13-9.

<sup>2510</sup>OR. REV. STAT. § 633.310 through 633.500 (1995).

<sup>2511</sup>Id. § 633.440.

<sup>2512</sup>Id. § 633.320.

<sup>2513</sup>Id. § 633.335.

<sup>2514</sup>Id. § 633.340.

with the Department of Agriculture. Sale of each type is allowed only under applicable brand and grade.<sup>2515</sup> The first purchaser of fertilizers, agricultural minerals, and amendments must pay the inspection fees<sup>2516</sup> and file a tonnage report with the department.<sup>2517</sup> Persons who mix or sell custom mix must keep applicable records for 1 year. Custom mixes are not required to be registered.<sup>2518</sup> Furthermore, all registrants, manufacturers or other persons importing fertilizer, agricultural minerals or amendments must file a confidential report with the department of the number of tons per year and other information considered necessary by the department.<sup>2519</sup>

The Department of Agriculture must make sample and analysis of fertilizers, agricultural minerals, and amendments, according to methods approved by the department, taking into consideration the methods agreed upon by the Association of Official Agricultural Chemists of North America and the advice and opinion of other qualified experts in this field.<sup>2520</sup>

**California (region 10).**—The California Fertilizing Materials law<sup>2521</sup> was enacted with the following primary purposes:<sup>2522</sup>

- To promote the distribution of effective and safe fertilizing materials essential for the production of food and fiber.
- To provide assurance to the consumer of commercial fertilizers, agricultural minerals, packaged soil amendments and auxiliary soil and plant substances.

The Fertilizing Materials law creates a Fertilizer Inspection Advisory Board, consisting of nine persons,<sup>2523</sup> to advise the director and make recommendations on all matters relating to the California Fertilizing Materials law, including but not limited to the inspection and enforcement program, research and education, the annual budget, necessary fees to provide adequate inspection services, and regulations required to accomplish the purposes of this law.<sup>2524</sup>

Under the California Fertilizing Materials law, the following provisions are applicable to all fertilizer materials distributed within California:

- Each specialty fertilizer, agricultural mineral, auxiliary soil and plant substance, and packed soil amendment must be registered in the name of the person whose name appears on the label before being distributed.<sup>2525</sup>
- Violation of the registration requirement is punishable by a fine not exceeding \$500. A second and subsequent violation constitutes a misdemeanor punishable by a fine of not less than \$100 but not exceeding \$1,000.<sup>2526</sup>

<sup>2515</sup>OR. REV. STAT. § 633.361.

<sup>2516</sup>Id. § 633.460.

<sup>2517</sup>Id. § 633.470.

<sup>2518</sup>Id. § 633.475.

<sup>2519</sup>Id. § 633.485.

<sup>2520</sup>Id. § 633.380, § 633.390.

<sup>2521</sup>CAL. FOOD & AGRIC. CODE § 14501 et seq. (West 1986 & Supp. 1996).

<sup>2522</sup>Id. § 14501 (West Supp. 1996).

<sup>2523</sup>Id. § 14581 (West Supp. 1996).

<sup>2524</sup>Id. § 14583.

<sup>2525</sup>Id. § 14583.

<sup>2526</sup>Id. § 14502.

- Each person who manufactures or distributes fertilizing materials must obtain a license from the director for each plant and business location that the person operates, before manufacture or distribution.
- However, the licensing requirement does not apply to a person who only distributes or who makes retail sales of packaged agricultural minerals, packaged commercial fertilizers, packaged soil amendments, or packaged auxiliary soil and plant substances that bear the registered label of another person who is licensed.<sup>2527</sup>
- Violation of the licensing requirement is punishable by a fine not exceeding \$500.
- A second and subsequent violation constitutes a misdemeanor punishable by a fine of not less than \$100 but not exceeding \$1000.<sup>2528</sup>
- Each lot, parcel, or package of fertilizing material distributed must comply with the labeling requirement.<sup>2529</sup>
- Violation of labeling requirement is punishable by a fine not exceeding \$250.
- A second and subsequent violation constitutes a misdemeanor punishable by a fine of not less than \$100 but not exceeding \$1,000.<sup>2530</sup>
- Each licensee whose name appears on the label who sells or distributes bulk fertilizing materials to an unlicensed purchaser must pay to the director an assessment of dollar of sales for all fertilizing materials.<sup>2531</sup>
- Each licensee who sells or distributes fertilizing materials must submit a tonnage report containing information on shipments received or deliveries made during a specified period.<sup>2532</sup>

The director is required to enforce the California Fertilizing Materials law and enforce such regulations pertaining to the manufacture, labeling, and distribution of fertilizers.<sup>2533</sup> The director is required to periodically sample, inspect, analyze, and test fertilizers distributed within California.<sup>2534</sup> The methods of analyses and sampling will be made according to the method determined by the director.<sup>2535</sup> Moreover, the director is required to publish annually results of analyses based on official samples as compared with the guaranteed analyses.<sup>2536</sup>

Noncompliant lots of fertilizers will be subject to seizure on complaint of the department to a court of competent jurisdiction. If the court finds the fertilizer to be in violation of the law, such fertilizer must be disposed of. However, before ordering disposition of the noncompliant fertilizer, the court must give claimant an opportunity to apply to the court for release of the fertilizer or for permission to process or relabel to bring it into compliance with this law.<sup>2537</sup>

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<sup>2527</sup>CAL. FOOD & AGRIC. CODE § 14591.

<sup>2528</sup>Id. § 14592 (West Supp. 1996).

<sup>2529</sup>Id. § 14631.

<sup>2530</sup>Id. § 14632 (West Supp. 1996).

<sup>2531</sup>Id. § 14611.

<sup>2532</sup>Id. § 14621.

<sup>2533</sup>Id. § 14502 (West Supp. 1996).

<sup>2534</sup>Id. § 14642.

<sup>2535</sup>Id. § 14643.

<sup>2536</sup>Id. § 14644.

<sup>2537</sup>Id. § 14649 through 14660.



**Tennessee (regions 11 & 12).**—The Tennessee Commercial Fertilizer Law of 1969,<sup>2538</sup> to be administered by the Commissioner of Agriculture,<sup>2539</sup> requires the following:

- Each brand and grade of commercial fertilizer must be registered before distribution, except fertilizer formulated accordingly to specifications furnished by a consumer before mixing.<sup>2540</sup>
- All commercial distributors of fertilizer distributed within Tennessee must pay an inspection fee.<sup>2541</sup>
- All persons distributing or selling fertilizer to a non-registrant must furnish the commissioner tonnage reports.<sup>2542</sup>
- All commercial fertilizer distributed in Tennessee must comply with the labeling requirement.<sup>2543</sup>
- All commercial fertilizer must satisfy the guaranteed analysis requirement.

Among other duties and powers, the commissioner has the mandatory duty to sample, inspect, make analysis of and test commercial fertilizers and soil conditioners in Tennessee.<sup>2544</sup> If noncompliance is determined, the commissioner may issue and enforce a stop *sale, use, or removal* order to the owner or custodian of any lot of commercial fertilizer or soil conditioner.<sup>2545</sup> Any lot of commercial fertilizer or soil conditioner that is not in compliance with the act is subject to seizure on complaint of the commissioner to a court of competent jurisdiction.<sup>2546</sup> If the court determines that the commercial fertilizer or soil conditioner is in violation of the act, it may order the condemnation of the commercial or soil conditioner. However, before condemning the commercial fertilizer or soil conditioner product, the court must give the claimant an opportunity to apply to the court for release of the commercial fertilizer or soil condition or for permission to bring it into compliance with the act.<sup>2547</sup>

The commissioner is authorized to prescribe rules and regulations regarding the distribution of commercial fertilizer and soil conditioner.<sup>2548</sup>

The act specifically prohibits anyone from distributing misbranded<sup>2549</sup> or adulterated commercial fertilizer or soil conditioner.<sup>2550</sup> This act does not restrict or void sales or exchanges of commercial fertilizer between manufacturers, processors, or shipment of fertilizer to manufacturers or processors.<sup>2551</sup>

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<sup>2538</sup>Tennessee Commercial Fertilizer Law of 1969, TENN. CODE ANN. § 43-11-101 et seq. (1987 & Supp. 1993).

<sup>2539</sup>Id. § 43-11-103 (1987).

<sup>2540</sup>Id. § 43-11-104 (1987 & Supp. 1993).

<sup>2541</sup>Id. § 43-11-106 (1987).

<sup>2542</sup>Id. § 43-11-107.

<sup>2543</sup>Id. § 43-11-105 .

<sup>2544</sup>Id. § 43-11-108.

<sup>2545</sup>Id. § 43-11-115.

<sup>2546</sup>Id. § 43-11-116 (1987).

<sup>2547</sup>Id. § 43-11-116 (1987).

<sup>2548</sup>Id. § 43-11-113 (1987).

<sup>2549</sup>Id. § 43-11-112 (1987).

<sup>2550</sup>Id. § 43-11-124 (1987).

<sup>2551</sup>Id. § 43-11-123.

## Pesticide control laws

All of the 17 states surveyed have pesticide control laws. These laws were enacted with the primary purpose of regulating in the public interest the labeling, distribution, storage, transportation, use, and application of pesticides. In general, these laws require that every pesticide must be registered before distribution. Every person who engages in the business of applying pesticides to the lands of another must obtain a license before engaging in such activities. Such license will not be issued unless the license applicant is certified or has a certified applicator in his or her employment at all times. A license applicant must also furnish to the authoritative agency evidence of financial responsibility, consisting of either a surety bond or a liability insurance policy or certification. These laws prohibit individuals from using pesticide for a use designated as a *state restricted pesticide use* without first obtaining a permit from the agency.

All of these state pesticide control laws provide that any pesticide or device that is unlawfully distributed will be liable for seizure and forfeiture by the agency upon application to the court of competent jurisdiction. Both monetary and imprisonment term penalties will be imposed for violation of any provision of the pesticide laws or any rules or regulations adopted pursuant to such laws. However, these laws provide for a number of exemptions from the penalties, including—

any carrier who is lawfully engaged in transporting a pesticide or device, if upon request, such carrier allows the agency to copy all records showing the transaction in and movement of the pesticide or device;

any person who prepares or packs any pesticide or device intended solely for export to a foreign country according to the specifications or directions of the purchaser; and

manufacturer or shipper for experimental use.

Furthermore, all of these laws prohibit any county, municipal, corporation, or other political subdivision from adopting or maintaining in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacturing, or application of pesticides.

**Delaware (region 1).**—The Delaware Pesticides Chapter was enacted with a number of purposes, including—

to regulate the sale, use, and application of pesticides in the interest of the overall public welfare;

to protect the consumer by requiring that pesticides sold in Delaware be correctly labeled with warnings and adequate directions for use; and

to restrict the use of any pesticides that are dangerous to man or his or her environment that restrictions are necessary in the overall public interest, weighing the benefits and the risks of that use.<sup>2552</sup>

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<sup>2552</sup>Pesticide, DEL. CODE ANN. § 1201 (1985).

The following requirements apply to all pesticide activities in Delaware:

- Every pesticide that does not have an EPA registration for the use intended and which is formulated for distribution and use within Delaware must be registered with the Delaware Department of Agriculture.<sup>2553</sup> The department may register such pesticides only if it determines that—
  - the pesticide's composition warrants the proposed claim of the use;
  - its labeling and other material required to be submitted comply with the labeling requirements;
  - it will perform its intended function without unreasonable adverse effects on the environment;
  - when used in compliance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects upon the environment;
  - the classification for general or restricted use is in conformity with Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and
  - special local needs exist.<sup>2554</sup>
- No person can engage in the business of applying pesticides to the lands of another without obtaining a license from the department. No license will be issued, or remains valid, unless such person is certified or has a certified applicator in the person's employment at all times.<sup>2555</sup> License application will be denied if the applicant—
  - cannot furnish to the department evidence of financial responsibility consisting of either a surety bond, a liability insurance policy or certification, or other evidence of financial responsibility acceptable to the department, or
  - commits any unlawful acts set forth in the Pesticide Chapter.<sup>2556</sup> Moreover, no license is required for a private applicator<sup>2557</sup> or for research personnel applying pesticides to bona fide experimental plots.<sup>2558</sup>
- No person can use a pesticide for a use designated as a *state restricted pesticide use* without first obtaining a permit from the department. No person can sell a *restricted use pesticide* or a *state restricted use pesticide* without first obtaining a dealer permit from the department.<sup>2559</sup>
- Any pesticide or device that is unlawfully distributed within Delaware will be liable for seizure and forfeiture by the department upon application to the Superior Court in and for the county where the pesticide in question is located.<sup>2560</sup>

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<sup>2553</sup>Pesticide, DEL. CODE ANN. § 1204(b).

<sup>2554</sup>Id. § 1204(c).

<sup>2555</sup>Id. § 1206(a).

<sup>2556</sup>Id. § 1208. For the list and description of the unlawful acts, Id. § 1224.

<sup>2557</sup>Id. § 1206(a).

<sup>2558</sup>Id. § 1211.

<sup>2559</sup>Id. § 1214 (Supp. 1992).

<sup>2560</sup>Id. § 1227 (1985).

- Licensees or certified commercial applicators must maintain records in the application of pesticides, which are to be kept for 2 years from the date of application and are available for inspection to the department.<sup>2561</sup>
- No person can transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, or wildlife.<sup>2562</sup>

The Delaware Pesticide law imposes civil and criminal penalties for violation of any provision of this chapter, or any adopted rules or regulations. However, the following are exempted from civil penalties:<sup>2563</sup>

- Any carrier while lawfully engaged in transporting a pesticide or device, if, upon request, such carrier will allow the department to copy all records showing the transactions in and movement of the pesticide or device.
- Any person who prepares or packs any pesticide or device intended solely for export to a foreign country according to the specifications or directions of the purchasers.
- The manufacturer or shipper of a pesticide for experimental use—  
by or under the supervision of a state or Federal agency authorized to conduct research in the field of pesticides, or  
by others if the pesticide is not sold and if the container is conspicuously marked *for experimental use only, not to be sold*, together with other information.

Under the Delaware Pesticide law, the Delaware Department of Agriculture is required to—

issue registration for pesticides and devices properly distributed and/or used in the state;<sup>2564</sup>

impose a fee registration not exceeding \$25;<sup>2565</sup>

adopt *restriction use pesticide* classifications;<sup>2566</sup>

issue a cease and desist order to any person violating any rule, regulation, order, or provision of this law;<sup>2567</sup>

classify and subclassify licenses to be issued;<sup>2568</sup>

provide a program, by regulation, of registering noncertified persons in the employ of licensees;<sup>2569</sup>

promulgate rules, regulations and fees necessary to carry into effect the permit requirement;<sup>2570</sup> and

enforce the provisions of the pesticide law.<sup>2571</sup>

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<sup>2561</sup>DEL. CODE ANN. § 1234.

<sup>2562</sup>Id. § 1235.

<sup>2563</sup>Id. § 1224, § 1225.

<sup>2564</sup>Id. § 1203(a).

<sup>2565</sup>Id.

<sup>2566</sup>Id. § 1203(e).

<sup>2567</sup>Id. § 1203(i).

<sup>2568</sup>Id. § 1206(b).

<sup>2569</sup>Id. § 1212 (Supp. 1992).

<sup>2570</sup>Id. § 1214 (1985).

<sup>2571</sup>Id. § 1237.

In addition to the above mandatory duties, the department is authorized to do the following:

- Determine *state restricted pesticide uses* for Delaware or for designated areas within the state, and require a permit for purchase, possession, and application of a pesticide labeled for a use that is designated as a *state restricted pesticide use*.<sup>2572</sup>
- Declare as a pest any form of plant or animal life which is injurious to health or the environment.<sup>2573</sup>

Make reports to the EPA in such form and containing such information as EPA may from time to time require to comply with Federal Insecticide, Fungicide, and Rodenticide act (FIFRA).<sup>2574</sup>

- Determine standards of coloring or discoloring for pesticides by regulation.<sup>2575</sup>
- Enter upon private premises, with the written approval of the occupier of premises, for the purpose of inspection.<sup>2576</sup>
- Require, by regulation, the reporting of pesticide accidents or incidents to the department.<sup>2577</sup>
- Require the licensee to maintain records related to applications of certain *state restricted pesticide uses*.<sup>2578</sup>
- Promulgate rules and regulations governing the storing and disposal of pesticides or pesticide containers that can cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or can pollute any waterway in a way harmful to any wildlife.<sup>2579</sup>
- Issue and serve a written *stop sale, use, or removal* order if it has reasonable cause to believe that a pesticide or device is being distributed or used in violation of the pesticide law.<sup>2580</sup>
- Cooperate, receive grants-in-aid and enter into agreements with any agency of the Federal Government, of Delaware or its subdivisions, or with any agency of another state, to obtain assistance in the implementation of the pesticide law.<sup>2581</sup>
- Publish information and conduct short courses of instruction in the area of knowledge required in the pesticide law, in cooperation with the University of Delaware, Delaware State College, other educational institutions or trade associations.<sup>2582</sup>

The Delaware Pesticide chapter established a Pesticide Advisory Committee,<sup>2583</sup> which consists of twelve members who are appointed by the Governor.<sup>2584</sup> The

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<sup>2572</sup>DEL. CODE ANN. § 1203(c).

<sup>2573</sup>Id. § 1203(f).

<sup>2574</sup>Id. § 1203(g).

<sup>2575</sup>Id. § 1203(h).

<sup>2576</sup>Id. § 1226.

<sup>2577</sup>Id. § 1233(a) (1985).

<sup>2578</sup>Id. § 1234(a).

<sup>2579</sup>Id. § 1235.

<sup>2580</sup>Id. § 1236.

<sup>2581</sup>Id. § 1238.

<sup>2582</sup>Id. § 1239.

<sup>2583</sup>Id. § 1228 (1985).

<sup>2584</sup>Id. § 1229.

Committee's function is to advise the department on any and all problems concerning the sale, use, disposal, and storage of pesticides in Delaware.<sup>2585</sup>

**Maryland (region 1).**—The Maryland Pesticide and Pest Control Act<sup>2586</sup> includes, among other pest control laws,<sup>2587</sup> the Maryland Pesticide and Registration and Labeling law<sup>2588</sup> and the Pesticide Applicator's law.<sup>2589</sup> Each shall be discussed in turn.

**Maryland Pesticide and Registration and Labeling law.**—The administration of the Maryland Pesticide and Registration and Labeling law belongs to the state chemist subject to the supervision of the secretary of agriculture,<sup>2590</sup> who has the authority to adopt appropriate rules and regulations to carry out this law.<sup>2591</sup> Interestingly, the law encourages adoption of uniform pesticide requirements between the State and Federal Governments. This helps to avoid confusion that endangers the public health, resulting from diverse requirements, especially relating to the labeling and coloring of pesticides. Also uniformity helps to avoid increased costs to the people because of necessary compliance with diverse requirements for manufacturing and selling pesticides.<sup>2592</sup>

The secretary can cooperate and enter into agreements with other state, Federal, and private agencies to carry out the administration of this law.<sup>2593</sup> In addition, the secretary is required to develop a comprehensive pesticide data program consisting of—

the number and types of enforcement actions taken; and

figures for the number, types, and uses of pesticides in Maryland.<sup>2594</sup>

Before distributing pesticide in Maryland, the law requires all distributors to register it with the secretary.<sup>2595</sup> The distributor must file an application accompanied by annual registration and terminal registration fees.<sup>2596</sup> A late fee is also imposed.<sup>2597</sup> However, the distributor is exempted from the registration requirement if the pesticide is already registered by another person, provided that there is no change or alteration in the product label.<sup>2598</sup>

In addition to the registration requirement, all pesticides distributed, sold, offered for sale, delivered for transportation, or transported in intrastate commerce must comply with the packaging and labeling requirements.<sup>2599</sup> The secretary has a

<sup>2585</sup>DEL. CODE ANN. § 1230.

<sup>2586</sup>Pesticide and Pest Control Act, MD. CODE ANN., AGRI. § 5-1-1 et seq. (1985 & Supp. 1994).

<sup>2587</sup>Other pesticide control laws are the Plant Disease Control, § 5-301 to 5-313, the Mosquito Control, § 5-401 to 5-405, the Honey Bees, §§ 5-501 to 5-507, the San Juan Rabbits, § 5-601, the Pest Control Compact, § 5-701 to 5-716, and the Nuisance Bird Law, §§ 5-801 to 5-805.

<sup>2588</sup>Maryland Pesticide Registration and Labeling Law, MD. CODE ANN., AGRI. § 5-101 to 5-114 (1985 & Supp. 1994).

<sup>2589</sup>Id. § 5-201 to 5-211 (1985 & Supp. 1994).

<sup>2590</sup>Pesticide Applicator's Law, MD. CODE ANN., AGRI. § 5-102(a) (1985).

<sup>2591</sup>Id. § 5-104(a) (1985).

<sup>2592</sup>Id. § 5-105(c) (1985 & Supp. 1994).

<sup>2593</sup>Id. § 5-102(b) (1985).

<sup>2594</sup>Id. § 5-102(c) (Supp. 1994).

<sup>2595</sup>Pesticide Applicator's Law, MD. CODE ANN., AGRI. § 5-105(a), effective July 1, 1989 (Supp. 1994).

<sup>2596</sup>Id. § 5-105(b)-(d) (Supp. 1994). Subsequent amendments increased the amount of annual registration and terminal registration fees as follows:

	Before 1984	1984	1989	1992
Annual registration fee	\$15	\$20	\$35	\$60
Terminal registration fee	\$15	\$20	\$35	\$60

<sup>2597</sup>MD. CODE ANN., AGRI. § 5-105(e) (1985 & Supp. 1994).

<sup>2598</sup>Id. § 5-105(g), effective July 1, 1989, (Supp. 1994).

<sup>2599</sup>Id. § 5-106 (Supp. 1994).

number of options in dealing with noncomplying pesticides. The secretary may suspend or cancel the registration<sup>2600</sup> or issue and enforce a written stop-sale order.<sup>2601</sup> In addition, noncomplying pesticides may be subjected to seizure and condemnation proceeding in circuit court.<sup>2602</sup>

***Pesticide Applicator's law.***—To pay for the expenses of administering this law, the Pesticide Applicator's law creates a pesticide fund that consists of all collected fees.<sup>2603</sup>

Under the Pesticide Applicator's law, all pest control consultants, pest control applicators, and public agency applicators are required to obtain a certificate, which requires periodic renewal, indicating competence in one or more established categories from the secretary.<sup>2604</sup> Each place of business engaged in the business of conducting pest control must obtain an annual license indicating the category of operation.<sup>2605</sup> Pesticide dealers and public agencies must obtain a dealer permit<sup>2606</sup> and the public agency permit,<sup>2607</sup> respectively, from the secretary. In addition, the secretary must require all pest control consultants, pest control applicators, or public agency applicators to receive additional training prepared and administered by the department when significant technological developments have occurred that require additional knowledge in the area of classification for which the consultant or applicator has applied.<sup>2608</sup>

When certification has been suspended or revoked, the secretary must require that the pest control consultant, pest control applicator, or public agency applicator take a special examination prepared and administered by the department before certification may be renewed or reinstated.<sup>2609</sup>

The secretary has the following mandatory duties:<sup>2610</sup>

- Adopt rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container.
- Prescribe, when necessary, the time and conditions under which a pesticide may be sold, distributed, exchanged, or used in different areas of Maryland.
- Provide, if necessary, that extremely hazardous pesticides may be sold, distributed, exchanged, or applied only when special permission is first obtained from the secretary.
- Define the formulations and establish the conditions and appropriate areas for application of any pesticide.
- Establish guidelines and requirements for the application of pesticides and provide for submission of records to the secretary.

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<sup>2600</sup>MD. CODE ANN., AGRI. § 5-107 (1985).

<sup>2601</sup>Id. § 5-108 (Supp. 1994).

<sup>2602</sup>Id. § 5-111 (1985 & Supp. 1994).

<sup>2603</sup>Id. § 5-203 (1985).

<sup>2604</sup>Id. § 5-207 (a) (Supp. 1994).

<sup>2605</sup>Id. § 5-207(e).

<sup>2606</sup>Id. § 5-207(h).

<sup>2607</sup>Id. § 5-207(i) (Supp. 1994).

<sup>2608</sup>Id. § 5-207.1(a).

<sup>2609</sup>Id. § 5-207.1(b).

<sup>2610</sup>Id. § 5-204 (1985 & Supp. 1994).

- Design and conduct an appropriate educational program on the use of pesticides and the necessity for care when applying them.
- Encourage, conduct, and support research that will contribute to optimal uses of pesticides for maximum public benefit and minimum public damage.
- Require that records be kept by all licensees and permittees.
- Employ inspectors and other employees necessary for the proper enforcement of this law and the rule and regulations adopted pursuant to it.
- Coordinate and support pesticide monitoring programs.
- Establish appropriate categories and, if necessary, subcategories of applicators of pesticides.
- Establish guidelines and requirements for all licensees, certificate holders, and permittees for the identification of pests and their methods of inspection of property to determine the presence of pests.
- Adopt use classifications and other pertinent pesticide regulation provisions that are established by the U.S. EPA for the purposes of uniformity and ability to enter into cooperative agreements.
- Cooperate with state or Federal agencies as is reasonable and proper to carry out the provisions of this law.

The secretary is authorized not only to receive gifts, contributions, or funds, but also to receive and issue grants or contracts.<sup>2611</sup>

**Pennsylvania (region 1).**—The Pennsylvania Pesticide Control Act of 1973,<sup>2612</sup> to be administered by the secretary of agriculture,<sup>2613</sup> was enacted with the primary purpose of “regulat[ing] in the public interest, the labeling, distribution, storage, transportation, use, application, and disposal of pesticides”.<sup>2614</sup> This act and its provisions are a statewide concern and occupy the whole field of regulation relating to the registration, sale, transportation, distribution, notification of use, and use of pesticide to the exclusion of all local regulations. In other words, except when otherwise provided, no ordinance or regulation of any political subdivision or home rule municipality can prohibit or in any way attempt to regulate contrary to the provisions of this act, any matter relating to the registration, sale, transportation, distribution, notification of use, and use of pesticides.<sup>2615</sup>

The following provisions are applicable to pesticides in Pennsylvania:

- Each pesticide must be registered annually with the secretary before being distributed. The registration requirement does not apply to—
  - a pesticide which is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such place or warehouse as a constituent part to make a pesticide which is registered; or
  - a pesticide that is distributed under the provisions of an experimental use permit.<sup>2616</sup>

<sup>2611</sup>Pesticide Applicator's Law, MD. CODE ANN., AGR. § 5-202 (1985).

<sup>2612</sup>PENN STAT. ANN. § 111.21 et seq. (Supp. 1993).

<sup>2613</sup>Id. § 111.22.

<sup>2614</sup>Id. § 111.23.

<sup>2615</sup>Id. § 111.57.

<sup>2616</sup>Id. § 111.25a.



- Before selling pesticides that are classified for restricted use, each pesticide dealer must obtain an annual pesticide dealer license. Such license is required for each location or outlet located within Pennsylvania from which pesticides are sold. The license requirement does not apply to—
  - a licensed pesticide applicator who sells pesticides only as an integral part of his or her pesticide application service, when such pesticides are dispensed only through equipment used for such pesticide application; or
  - any Federal, state, county or municipal agency that provides pesticides only for its own programs. It should be noted that each pesticide dealer will be responsible for the actions of his or her employee(s).<sup>2617</sup>
- Each pest management consultant (consulting for a fee) must secure an annual license. This requirement does not apply to licensed pesticide applicators, or employees of Federal, State, county, or municipal agencies when acting in their official capacities.<sup>2618</sup> An examination is required for the pest management consultant's license.<sup>2619</sup>
- Each business, public utility, government agency, or other entity engaged in applying or contracting for the application of pesticides must obtain a license stating the categories in which it is to do business (as commercial pesticide applicator or public pesticide applicator). An applicant for a commercial applicator license must show satisfactory evidence of financial responsibility as required, and an applicant applying for a license to engage in aerial application of pesticides must meet all requirements of the Federal Aviation Administration and any other laws. This license requirement does not apply to—
  - private applicators, or
  - research personnel applying pesticides to bona fide experimental plots.<sup>2620</sup>

All licensees must register with the secretary their noncertified employees as pesticide application technicians.<sup>2621</sup>

- To apply pesticides classified for restricted use, each private applicator must comply with the certification requirements considered by the secretary as necessary to prevent unreasonable adverse effects on the environment. To be certified as a private applicator to use a restricted-use pesticide, the applicator must have a permit that signifies competency to use such pesticides.<sup>2622</sup>
- Public applicators (employed by any unit of a Federal, state, or local agency) must be certified before applying pesticides.<sup>2623</sup>
- Each person issued a license or permit must keep accurate records of such relevant information as the secretary may deem necessary and make such records accessible to the secretary.<sup>2624</sup>

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<sup>2617</sup>PENN STAT. ANN. § 111.32.

<sup>2618</sup>Id. § 111.33.

<sup>2619</sup>Id. § 111.34.

<sup>2620</sup>Id. § 111.35a.

<sup>2621</sup>Id. § 111.36b.

<sup>2622</sup>Id. § 111.37, § 111.37b.

<sup>2623</sup>Id. § 111.37b.

<sup>2624</sup>Id. § 111.55.

- The act provides the following exemptions:<sup>2625</sup>
- A farmer who qualifies as a certified private applicator is exempt from the commercial pesticide applicator's license and related requirements.
- A landscape gardener or a veterinarian who does not apply pesticides classified for restricted use is exempt from licensing requirement of this act.

The secretary is authorized to do the following:<sup>2626</sup>

- To declare as a pest any form of plant or animal life, other than man.
- To determine pesticides, and quantities of substances contained in pesticides, which are injurious to the environment (the board must be guided by EPA regulations in this determination).
- To adopt appropriate regulations for carrying out the provisions of this act.

In addition, for the purpose of uniformity of requirements between the states and the Federal Government and to avoid confusion endangering the environment, the Secretary can also adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and pesticides classified for restricted use as established by the EPA or other agencies of the Federal Government or the Commonwealth of Pennsylvania.<sup>2627</sup>

This act creates a Pesticide Advisory Board, consisting of 16 members, that is responsible for advising the secretary on any or all problems regarding the use and application of pesticides, including pest control problems, environmental, or health programs related to pesticide use, and review of needed legislation, regulations, and agency programs.<sup>2628</sup>

The act specifically protects all trade secrets and commercial or financial information by allowing an applicant, in submitting data required by this act, to clearly mark any portions, and submit such marked material separately, which are trade secrets and other information. The secretary will not make such information public.<sup>2629</sup>

Furthermore, the act imposes both civil<sup>2630</sup> and criminal penalties for violation of the act.<sup>2631</sup>

**Alabama (region 2).**—The Alabama Pesticide Act of 1971<sup>2632</sup> was enacted to "regulate the registration, sale, and use of pesticides intended for use on farm, garden, lawn, golf course, or in the home and other uses for which pesticides are ordinarily and customarily used."<sup>2633</sup> However, this act does not apply to:

- Any carrier while lawfully engaged in transporting a pesticide in Alabama if such carrier, upon request, permits the Commissioner of Agriculture and

<sup>2625</sup>PENN STAT. ANN. § 111.43.

<sup>2626</sup>Id. § 111.27.

<sup>2627</sup>Id. § 111.27.

<sup>2628</sup>Id. § 111.45.

<sup>2629</sup>Id. § 111.37c.

<sup>2630</sup>Id. § 111.50a.

<sup>2631</sup>Id. § 111.49.

<sup>2632</sup>Alabama Pesticide Act of 1971, ALA. CODE § 2-27-1 et seq. (1975 & Supp. 1993).

<sup>2633</sup>Id. § 2-27-3 (1975).

Industries to copy all records showing the transaction in and movement of the items.<sup>2634</sup>

- Any bona fide public or private research institution or agency.<sup>2635</sup>
- The manufacturer or shipper of a pesticide for bona fide experimental use only, provided that the manufacturer or shipper obtains a permit from the commissioner for such use.<sup>2636</sup>
- Pesticides intended solely for export to a foreign country when prepared or packed according to the specifications or directions of the purchaser.<sup>2637</sup>
- The registration and labeling are not required if a pesticide is stored or shipped from one manufacturing plant in Alabama to another manufacturing plant within Alabama.<sup>2638</sup>

In 1993, the act was amended to specifically prohibit any county, municipal corporation, or other political subdivision to adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacturing, or application of pesticides.<sup>2639</sup>

The act creates a pesticide advisory committee consisting of 13 appointed members.<sup>2640</sup> The committee has a number of mandatory powers and duties, including—

- considering and studying the entire field of pesticides;
- reviewing and making recommendations to the commissioner on any pesticide registration;
- advising, counseling, and consulting with the commissioner upon his or her request concerning the promulgation, administration, and enforcement of all laws, rules, and regulations regarding pesticides;
- considering all matters submitted to it by the commissioner, other committee members, or any person affected by the provisions;
- suggesting or recommending policies or practices for the administration and enforcement of the Alabama Pesticide Act; and
- reviewing registered pesticides as to their safety or efficiency, or both, and recommending to the commissioner as to which pesticides should be restricted or prohibited.<sup>2641</sup>

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<sup>2634</sup>ALA. CODE § 2-27-5(a) (Supp. 1993).

<sup>2635</sup>Id.

<sup>2636</sup>Id. § 2-27-5(a) (Supp. 1993).

<sup>2637</sup>Id. § 2-27-5(b).

<sup>2638</sup>Id. § 2-27-5(c).

<sup>2639</sup>Id. § 2-27-5.1 (Supp. 1993). This provision repeals all local law or general local application regulating pesticide. Id.

<sup>2640</sup>Id. § 2-27-6(a). These 13 members include:

- Two members from the School of Agriculture and the Agricultural Experiment Station of Auburn University;
- Two members from the Cooperative Agriculture Extension Service of Auburn University;
- Two members in the employ of the State Department of Agriculture and Industries;
- Two members in the employ of the State Department of Public Health;
- Two members in the employ of the State Department of Conservation;
- Two members from the Alabama Pesticide Institute; and
- One member to be appointed from a list of five nominees submitted by the Alabama Farmers Federation who are actively and primarily engaged in farming. Id.

<sup>2641</sup>Id. § 2-27-6(d) (Supp. 1993).

Under the Alabama Pesticides Act, the commissioner is authorized to:

- Engage in intergovernmental cooperation and agreements.<sup>2642</sup>
- Adopt rules and regulations for the administration and enforcement of the act, with the approval of the State Board of Agriculture and Industries.<sup>2643</sup>
- Enter upon public or private premises or carrier to sample and inspect to determine compliance with the act.<sup>2644</sup>
- Provide for the establishment and operation of a laboratory to obtain reliable analysis of raw and processed agricultural products and the materials used in production of agricultural products for harmful pesticide residues, the protection and production of fish and wildlife, and the use of recreational areas as related to pesticide residue.<sup>2645</sup>

The following mandatory provisions are applicable to all activities concerning pesticides:

- All pesticides or devices that are distributed, sold, or offered for sale, or transported in intrastate commerce in Alabama must be registered with the commissioner.
- All persons who sell or offer for sale any restricted-use pesticides must obtain an annual license to sell that authorizes the sale of restricted-use pesticides to persons who have been issued certified pesticide-use permits.<sup>2646</sup>
- All persons who purchase and use restricted-use pesticides must obtain pesticide-use permits from the commissioner before engaging in such activities.<sup>2647</sup>

The act requires that violation of any provisions of the Alabama Pesticide Act will subject the noncomplying pesticide or device to suspension from sale, seizure, and condemnation.<sup>2648</sup> Moreover, anyone who violates any provisions of the act or promulgated rule or regulation will be guilty of a misdemeanor and upon conviction is subject to monetary fines.<sup>2649</sup>

***Application of pesticides.***—Acknowledging that the misuse of pesticides may seriously injure health, property, crops, wildlife, bees, and fish, the Alabama State Legislature enacted a set of provisions to *regulate, in the public interest, the application of pesticides.*<sup>2650</sup> However, these provisions do not apply to—

- the application of pesticides to lawns, trees, or shrubs immediately adjacent to a dwelling or building;
- the use of pesticides or other chemicals for the control, eradication, or prevention of termites or household pests;
- persons engaged in farming activities who use their own aircraft or ground equipment for the application of pesticides;

<sup>2642</sup>ALA. CODE § 2-27-7 (1975).

<sup>2643</sup>Id. § 2-27-8.

<sup>2644</sup>Id. § 2-27-12 (1975).

<sup>2645</sup>Id. § 2-27-30 (Supp. 1993).

<sup>2646</sup>GA. CODE ANN. § 2-27-10 (1975).

<sup>2647</sup>Id. § 2-27-11 (Supp. 1993). Applicant must meet certain qualifications and pay a permit fee of not less than \$15 nor more than \$30 per category of certification.

<sup>2648</sup>Id. § 2-27-15 (1975).

<sup>2649</sup>Id. § 2-27-16(a).

<sup>2650</sup>Georgia Pesticide Control Act of 1976, GA. CODE ANN. § 2-27-51 (1975).

municipalities, counties, or the state or Federal agencies where the government agencies engage in the custom application of pesticides.

However, this exemption does not apply to contractors performing custom application of pesticides for any governmental agency.<sup>2651</sup>

The act requires all pesticide applicators to obtain an annual license before engaging in pesticides application activities.<sup>2652</sup> An applicant for license must also furnish and file with the commissioner a surety bond or liability insurance.<sup>2653</sup> The act also imposes a general penalty for violations of the application of pesticides law: a violator is guilty of a misdemeanor and, upon conviction, a fine of not less than \$25 nor more than \$500 or an imprisonment term of not more than 6 months, or both, is imposed.<sup>2654</sup>

Moreover, these provisions authorize the commissioner to—

- promulgate rules and regulations necessary and reasonable to carry out the purpose of the pesticides application law;<sup>2655</sup>
- prescribe the pesticides or methods, by rules and regulations, to be used for their application and prohibit or limit the use of certain pesticides;<sup>2656</sup>
- require any licensee to maintain records and to furnish reports by rules and regulations;<sup>2657</sup> and
- enter upon public or private premises to determine compliance with the laws.<sup>2658</sup>

**Georgia (region 2).**—Georgia has two acts dealing with pesticides: the Georgia Pesticide Control Act of 1976<sup>2659</sup> and the Georgia Pesticide Use and Application Act of 1976.<sup>2660</sup> are discussed.

**Georgia Pesticide Control Act of 1976.**—This act was created with the primary purpose of regulating the labeling, distribution, storage, transportation, use, and disposal of pesticides,<sup>2661</sup> and to be administered by the commissioner of agriculture.<sup>2662</sup>

The following requirements apply to all pesticide activities within Georgia:

- All pesticides to be distributed must be registered annually with the commissioner.<sup>2663</sup> However, such registration is not required if—
  - the pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person, and such pesticide is used only at such plant or warehouse as a constituent part to make a pesticide which is registered; or

<sup>2651</sup> ALA. CODE § 2-27-52.

<sup>2652</sup> Id. § 2-27-53 (1975).

<sup>2653</sup> Id. § 2-27-56.

<sup>2654</sup> Id. § 2-27-62(a).

<sup>2655</sup> Id. § 2-27-57.

<sup>2656</sup> Id. § 2-27-58.

<sup>2657</sup> Id. § 2-27-60.

<sup>2658</sup> Id. § 2-27-61.

<sup>2659</sup> Id. § 2-7-50 to 2-7-73 (1990).

<sup>2660</sup> Id. § 2-7-90 to 2-7-114 (1990 & Supp. 1993)

<sup>2661</sup> Georgia Pesticide Control Act of 1976, GA. CODE ANN. § 2-7-51 (1990).

<sup>2662</sup> Id. § 2-7-54.

<sup>2663</sup> Id. § 2-7-55(a).

the pesticide is distributed under an experimental use permit.<sup>2664</sup> Applicants who want to register a pesticide must pay an annual registration of \$10 to the commissioner.<sup>2665</sup>

Restricted use pesticide dealers must obtain an annual license from the commissioner.<sup>2666</sup>

A license application must be accompanied by a \$15 annual license fee.<sup>2667</sup> However, this requirement does not apply to—

a licensed pesticide contractor who sells pesticides only as an integral part of his or her pesticide application service, when the pesticides are dispensed only through equipment used for such pesticide application, or a Federal, State, county or municipal agency that provides pesticides only for its programs.<sup>2668</sup>

The commissioner is authorized to do the following:

- To require any person issued a license, permit, or registration to keep accurate records of pesticide activities.<sup>2669</sup>
- To issue subpoenas to compel attendance of witness or production of books, documents and records at the hearing affecting the authority or privilege granted by a license, registration, or permit.<sup>2670</sup>
- To deny, suspend, or revoke any license, registration, or permit, subject to a hearing and in compliance with the Georgia Administrative Procedure Act.<sup>2671</sup>
- To declare as a pest any form of plant or animal life that is harmful to health or the environment.<sup>2672</sup>
- To determine whether pesticides under the authority of FIFRA are highly toxic to man.<sup>2673</sup>
- To determine those pesticides and quantities of substances contained in pesticides registered for special local needs that are injurious to the environment.<sup>2674</sup>

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<sup>2664</sup>GA. CODE ANN. The Commissioner may issue an experimental use permit if determined that the applicant needs the permit to accumulate information necessary to register a pesticide. Id. § 2-7-56(a)(1). The commissioner may refuse such permit if determined that the permit is not warranted or that the pesticide use may cause unreasonable adverse effects on the environment. § 2-7-56(a)(2). The commissioner may prescribe terms, conditions, time limit and required supervision before issuing such permit. Id. § 2-7-56(a)(3). In addition, the commissioner may revoke or modify any experimental use permit at any time if determined that its terms and conditions are violated, or that its terms and conditions are not adequate to avoid unreasonable adverse effects on the environment. Id. § 2-7-56(a)(4).

<sup>2665</sup>GA. CODE ANN. § 2-7-55(f).

<sup>2666</sup>Id. § 2-7-57(a).

<sup>2667</sup>Id. § 2-7-57(b).

<sup>2668</sup>Id. § 2-7-57(c).

<sup>2669</sup>Id. § 2-7-61.

<sup>2670</sup>Id. § 2-7-60.

<sup>2671</sup>Id. § 2-7-58.

<sup>2672</sup>Id. § 2-7-63(a)(1).

<sup>2673</sup>Id. § 2-7-63(a)(2).

<sup>2674</sup>Id. § 2-7-63(a)(3).

- To make appropriate regulations, where such regulations are necessary for the enforcement and administration of this Pesticide Control Act.<sup>2675</sup>
- To adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements and issuance of experimental use permits, established by the EPA or other Federal or State agencies.<sup>2676</sup>
- To cooperate, receive grants-in-aid, and enter into cooperative agreements with any Federal, State, or State subdivision agencies.<sup>2677</sup>
- To publish results of analyses based on official samples as compared with the analyses guaranteed and information regarding the distribution of pesticides.<sup>2678</sup>
- The act provides that it is unlawful for any person to distribute a pesticide that—
  - has not been registered;
  - does not comply with the labeling requirement;
  - has not been colored or discolored as required by FIFRA;
  - is adulterated or misbranded; or
  - is in containers that are unsafe because of damage.<sup>2679</sup>
- Also, the act provides that it is equally unlawful to—
  - distribute pesticide labeled for restricted use to any person who is required to have a permit or to be certified, unless such person has the valid permit or is certified;
  - detach, alter, deface, or destroy, wholly or in part, any label or labeling;
  - use any pesticide in a manner inconsistent with its labeling or the regulations of the commissioner;
  - handle, transport, store, displace, or distribute pesticides in such a manner as to endanger man and the environment; and
  - fail to comply with this act or the adopted regulations.<sup>2680</sup>

Any person who violates any provision of this act or adopted regulations is guilty of a misdemeanor.<sup>2681</sup> However, the following persons and activities are exempted from these prohibited acts:<sup>2682</sup>

- Any carrier while lawfully engaged in transporting a pesticide or device, if upon request, will allow the department to copy all records showing the transactions in and movement of the pesticide or device.
- Any person who prepares or packs any pesticide or device intended solely for export to a foreign country according to the specifications or directions of the purchasers.

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<sup>2675</sup>GA. CODE ANN. § 2-7-63(b).

<sup>2676</sup>Id. § 2-7-63(c).

<sup>2677</sup>Id. § 2-7-65.

<sup>2678</sup>Id. § 2-7-67.

<sup>2679</sup>Id. § 2-7-62(a).

<sup>2680</sup>Id. § 2-7-62(b).

<sup>2681</sup>Id. 2-7-73.

<sup>2682</sup>Id. § 2-7-62(c).

- The manufacturer or shipper of a pesticide for experimental use by or under the supervision of a state or Federal agency authorized to conduct research in the field of pesticides.
- Public officials and Federal Government while engaged in the performance of their official duties in administering state or Federal pesticide laws or regulations.
- Any person who ships a substance or mixture of substances being put through tests, in which the purpose is only to determine its value for pesticide purposes, its toxicity, or other properties.

When the commissioner has reasonable cause to believe a violation exists, the official may issue and serve a written stop sale, use, or removal order upon the owner or custodian of the pesticide or device.<sup>2683</sup> After serving the order, the official may petition the court of competent jurisdiction in the appropriate county to issue temporary or permanent injunctions. The commissioner may also petition the court for mandatory or restraining, or condemnation orders.<sup>2684</sup>

***Georgia Pesticide Use and Application Act of 1976.***—This act has the primary purpose of regulating, in the public interest, the use and application of pesticides to control pests.<sup>2685</sup> The act is to be administered and enforced by the commissioner of agriculture, who in the act's administration must appoint a Pesticide Advisory Board to advise him or her on matters regarding pesticides and their use and application.<sup>2686</sup> However, the act provides the following exemptions:

- The licensing requirement does not apply to a farmer applying pesticides classified for general use for the farmer or the farmer's neighbors.
- This exemption applies only if the farmer—
  - operates farm property and use and maintains pesticide application equipment mainly for ones own use;
  - is not regularly engaged in the business of applying pesticides for hire, amounting to a principal or regular occupation, and does not publicly hold out as a pesticide contractor; and
  - operates the pesticide application equipment only in the vicinity of ones own property and to accommodate neighbors.<sup>2687</sup>
- The licensing requirement does not apply to a veterinarian during the normal course of veterinary practice, provided that the veterinarian is not regularly engaged in the business of applying pesticides for hire, amounting to a principal or regular occupation, and does not publicly hold out as a pesticide contractor.<sup>2688</sup>
- The license requirement does not apply to research personnel applying pesticides only to bona fide experimental plots, other than restricted use pesticides (or state restricted use pesticides) restricted to use by certified applicators.<sup>2689</sup>

<sup>2683</sup>GA. CODE ANN. § 2-7-70.

<sup>2684</sup>Id. § 2-7-71.

<sup>2685</sup>Id. § 2-7-90 (1990 & Supp. 1993).

<sup>2686</sup>Id. § 2-7-93, § 2-7-97.

<sup>2687</sup>Id. § 2-7-112(a).

<sup>2688</sup>Id. § 2-7-112(b).

<sup>2689</sup>Id. § 2-7-112(c).



- Persons subject to the Georgia Structural Pest Control Act are exempt from this act and all adopted regulations.<sup>2690</sup>

To engage in the business of contracting for the application of any pesticide to the land, a pesticide contractor must obtain an annual license for each business location. Each business location is required to employ at least one full-time certified commercial pesticide applicator. In addition, the applicant must pay an annual license fee<sup>2691</sup> and file proof of financial responsibility.<sup>2692</sup>

To purchase, use, or supervise the use of any pesticide as a private applicator, such person must be licensed as a certified private applicator or acting under the direct supervision of an individual who is licensed as a certified private applicator.<sup>2693</sup> A showing of competency to apply *restricted use pesticides* safely is required.<sup>2694</sup> However, no license fee is required.<sup>2695</sup> Similarly, a person must be licensed as a certified commercial applicator before engaging in any purchase, use or supervision of the use of any pesticide as a commercial applicator.<sup>2696</sup> A license fee is also required.<sup>2697</sup> However, whereas other licenses are issued annually, the certified commercial pesticide applicator's license is issued for 5 years.<sup>2698</sup> Moreover, all licenses, permits or certifications may be subject to denial, suspension, revocation, or modification.<sup>2699</sup>

The commissioner is authorized to do the following:

- To cooperate with educational institutions and other state or Federal agencies in publishing information and conducting short courses of instruction in the areas relating to pesticides.<sup>2700</sup>
- To cooperate, receive grants-in-aid, and enter into agreements with any agency of the Federal, State, or subdivision governmental bodies to obtain assistance in the implementation of this act.<sup>2701</sup>
- To classify or sub-classify certifications or licenses to be issued under this act.<sup>2702</sup>
- To enter into private premises, at reasonable times, for inspections or investigations to implement and enforce the act.<sup>2703</sup>
- To provide for inspection of any equipment used for application of pesticides.<sup>2704</sup>
- To delegate duties to employees or agents of the department.<sup>2705</sup>

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<sup>2690</sup>GA. CODE ANN. § 2-7-112(d).

<sup>2691</sup>Id. § 2-7-99(a).

<sup>2692</sup>Id. § 2-7-103.

<sup>2693</sup>Id. § 2-7-99(b)(1)(A).

<sup>2694</sup>Id.

<sup>2695</sup>Id. § 2-7-99(b)(1)(C).

<sup>2696</sup>Id. § 2-7-99(b)(2)(A).

<sup>2697</sup>Id. § 2-7-99(b)(2)(C).

<sup>2698</sup>Id.

<sup>2699</sup>Id. § 2-7-102.

<sup>2700</sup>Id. § 2-7-95.

<sup>2701</sup>Id. § 2-7-96.

<sup>2702</sup>Id. § 2-7-98(a).

<sup>2703</sup>Id. § 2-7-107.

<sup>2704</sup>Id. § 2-7-105.

<sup>2705</sup>Id. § 2-7-94.

- To issue regulations to carry out this act.<sup>2706</sup>
- To adopt *restrictive use pesticide* classifications as determined by the EPA.<sup>2707</sup>
- To determine, by regulation and after a public hearing following by due notice, *state restricted pesticide uses* for the State or for designated areas within the state.<sup>2708</sup>
- To declare any form of plant or animal life (other than man) that is injurious to health or the environment to be a pest, after notice and opportunity for hearing.<sup>2709</sup>
- To make reports to the EPA as the agency may require.<sup>2710</sup>
- To prescribe standards for the certification of applicators of pesticides.<sup>2711</sup>
- To require licenses for all applicators of pesticides.
- To require licensed pesticide contractors and licensed certified commercial applicators who are not employed by or otherwise acting for a licensed pesticide contractor, to maintain records with respect to applications of pesticides.<sup>2712</sup>

The act specifically prohibits any county, municipal corporation, consolidated government, or other political subdivision to adopt or continue in effect any ordinance, rule, regulation or resolution relating to pesticide use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture.<sup>2713</sup> However, the governing authority of any county or municipality is allowed to petition the commissioner for a variance from a rule or regulation of the commissioner because of special circumstances.<sup>2714</sup>

Any individual violating any provision of this act or any regulations adopted by the commissioner is guilty of a misdemeanor.<sup>2715</sup>

**Arkansas (region 3).**—Under the Arkansas Pesticide Control act,<sup>2716</sup> which is administered by the State Plant Board,<sup>2717</sup> the following provisions are applicable to pesticides in Arkansas:

- Each pesticide must be registered annually by the State Plant Board before sale or distribution in Arkansas.<sup>2718</sup> The registration applicant must pay an annual registration fee.<sup>2719</sup> The board, if certified by the administrator of EPA, may allow registration of noncompliant pesticides if such pesticides are formulated for local needs.<sup>2720</sup>

<sup>2706</sup>GA. CODE ANN. § 2-7-97(a).

<sup>2707</sup>Id. § 2-7-97(c).

<sup>2708</sup>Id. § 2-7-97(c).

<sup>2709</sup>Id. § 2-7-97(f).

<sup>2710</sup>Id. § 2-7-97(g).

<sup>2711</sup>Id. § 2-7-98(b).

<sup>2712</sup>Id. § 2-7-104.

<sup>2713</sup>Id. § 2-7-113.1(a), effective on July 1, 1992 (Supp. 1993).

<sup>2714</sup>Id. § 2-7-113.1(b).

<sup>2715</sup>Id. § 2-7-114.

<sup>2716</sup>ARK. CODE ANN. § 2-6-401 through 2-16-419 (1987).

<sup>2717</sup>Id. § 2-16-405.

<sup>2718</sup>Id. § 2-16-407.

<sup>2719</sup>Id.

<sup>2720</sup>Id. § 2-16-408.

- Pesticides must comply with the labeling requirement.<sup>2721</sup>

The State Plant Board is authorized to do the following:<sup>2722</sup>

- To declare as a pest any form of plant or animal life, other than human.
- To determine whether pesticides registered under the authority of FIFRA are highly toxic to human.
- To determine pesticides, and quantities of substances contained in pesticides, that are injurious to the environment (the board must be guided by EPA regulations in this determination).
- To prescribe regulations requiring any pesticide registered for special local needs to be colored or discolored if it determines that the requirement is feasible and necessary to protect health and the environment.
- To inspect pesticides to determine compliance.
- To make appropriate regulations that it deems necessary for the enforcement and administration of the Pesticide Control Act.

In addition, the board can issue experimental-use permits<sup>2723</sup> provided that such experiment does not cause unreasonable adverse effects on the environment.<sup>2724</sup>

The act prohibits distribution of—

- pesticides that have not been registered;
- pesticides that do not conform to the labeling requirement;
- any pesticide that has not been colored or discolored as required by FIFRA;
- any pesticide that is adulterated or misbranded, or a device which is misbranded; and
- any pesticide in containers that are unsafe because of damage.<sup>2725</sup>

However, this prohibition provision does not apply to the following:<sup>2726</sup>

- Any carrier while lawfully engaged in transporting a pesticide, provided that the carrier, upon request, allows the board to copy all records showing the transactions in and movement of the pesticides or devices.
- Public officials of this State and the Federal Government while engaged in the performance of their official duties in administering state or Federal pesticide laws or regulations or while engaged in pesticide research.
- The manufacturer or shipper of pesticide for experimental use only by or under required supervision.
- Any person who ships a substance or mixture of substances being put through tests to determine its values for pesticide purposes or its toxicity, provided that the user does not expect to receive any benefit in pest control from its use.

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<sup>2721</sup>ARK. CODE ANN. § 2-16-410.

<sup>2722</sup>Id. § 2-16-406.

<sup>2723</sup>Id. § 2-16-409.

<sup>2724</sup>Id.

<sup>2725</sup>Id. § 2-16-411.

<sup>2726</sup>Id. § 2-16-411.

However, the act also provides for protection of trade secrets or commercial or financial information.<sup>2727</sup>

Noncompliant sale or distribution of pesticides will be subject to a "stop-sale, use or removal order" issued by the board.<sup>2728</sup> If violation does not cease, such pesticide will be subject to seizure on complaint of the board to a court of competent jurisdiction. If the court finds the pesticide violates the act, it will condemn the pesticide and order it disposed of. However, before ordering disposition of the noncompliant pesticide, the court must give claimant an opportunity to apply to the court for release of the pesticides or for permission to bring it into compliance with this act.<sup>2729</sup>

The act imposes a fine of not less than \$100 and not more than \$1000 for the first offense, and a fine of not less than \$500 and not more than \$2,000 for the second and any additional offense.<sup>2730</sup>

**Mississippi (region 3).**—Under the Mississippi Pesticide Law of 1975,<sup>2731</sup> the following provisions are required for pesticide activities:

- Each pesticide that is sold or distributed within Mississippi must be registered annually. This registration requirement does not apply to a pesticide that is shipped intrastate from one plant to another plant operated by the same person.<sup>2732</sup>
- If allowed by the administrator of EPA, the commissioner of Mississippi Department of Agriculture and Commerce can issue an experimental permit to any person requesting such.<sup>2733</sup>

Each pesticide dealer must obtain an annual license. However, this requirement does not apply to —

a licensed pesticide applicator who sells pesticides only as an integral part of his or her pesticide application service where such pesticides are applied by the commercial applicator; or

any Federal, State, county or municipal agency that provides pesticides only for its own programs.<sup>2734</sup>

The commissioner of Agriculture and Commerce is authorized:

- To declare as a pest any form of plant or animal life.<sup>2735</sup>
- To determine whether pesticides registered under the authority of FIFRA are highly toxic to human.<sup>2736</sup>
- To determine standards of coloring or discoloring for pesticides.<sup>2737</sup>

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<sup>2727</sup>ARK. CODE ANN. § 2-16-418.

<sup>2728</sup>Id. § 2-16-413.

<sup>2729</sup>Id. § 2-16-414.

<sup>2730</sup>Id. § 2-16-404.

<sup>2731</sup>MISS. CODE ANN. §§ 69-23-1 through 69-23-27 et seq. (1991 & Supp. 1993).

<sup>2732</sup>Id. § 69-23-7 (Supp. 1993).

<sup>2733</sup>Id. § 69-23-25 (1991).

<sup>2734</sup>Id. § 69-23-27 (Supp. 1991).

<sup>2735</sup>Id. § 69-23-9(1)(a) (1991).

<sup>2736</sup>Id. § 69-23-9(1)(b).

<sup>2737</sup>Id. § 69-23-9(1)(c).

For the purpose of uniformity of requirements between the states and the Federal Government and to avoid confusion endangering the environment, the commissioner can also adopt regulations in conformity with the primary pesticide standards established by the Mississippi Legislature of Federal Government.<sup>2738</sup>

The act prohibits distribution of—

- pesticides that have not been registered;
- pesticides that do not conform with the labeling requirement;
- any pesticide that has not been colored or discolored as required by FIFRA;
- any pesticide that is adulterated or misbranded, or device that is misbranded; and
- any pesticide in containers that are unsafe because damage<sup>2739</sup>

However, this prohibition provision does not apply to the following:<sup>2740</sup>

- Any carrier although lawfully engaged in transporting a pesticide, provided that the carrier, upon request, allows the board to copy all records showing the transactions in and movement of the pesticides or devices;
- Public officials of this State and the Federal Government while engaged in the performance of their official duties in administering State or Federal pesticide laws or regulations or while engaged in pesticide research;
- The manufacturer or shipper of pesticides for experimental use only—
  - by or under required supervision, and
  - by others if the shipper or manufacturer holds a valid experimental use permit.

Moreover, note that the act does not apply to pesticides intended solely for export to a foreign country when prepared or packaged according to the specifications or directions of the purchaser.<sup>2741</sup>

The act imposes both a monetary fine and a prison term on violators of the act.<sup>2742</sup>

The Mississippi Legislature also enacted two separate acts dealing with Pesticide Application and Disposal of Pesticides. Each shall be discussed in turn.

***Pesticide application.***—The Mississippi Pesticide Application Law of 1975,<sup>2743</sup> administered and enforced by the commissioner of the Mississippi Department of Agriculture and Commerce,<sup>2744</sup> was enacted with the primary purpose of providing "a means for the state certification of applicators of restricted use pesticides required under the [FIFRA], and regulating in the public interest the use and application of such pesticides . . . ."<sup>2745</sup>

The act requires that all persons who engage in the application or use of any pesticide that is restricted by the EPA or the commissioner must be certified and

<sup>2738</sup>MISS. CODE ANN. § 69-23-9(3).

<sup>2739</sup>Id. § 69-23-5(1).

<sup>2740</sup>Id. § 69-23-15.

<sup>2741</sup>Id. § 69-23-15(2).

<sup>2742</sup>Id. § 69-23-19.

<sup>2743</sup>Id. § 69-23-101 through 69-23-133 (1991 & Supp. 1993).

<sup>2744</sup>Id. § 69-23-103, 69-23-125 (1991).

<sup>2745</sup>Id. § 69-23-105.

licensed by the commissioner.<sup>2746</sup> Licenses and permits are subject to denial, suspension, revocation, and modification by the commissioner.<sup>2747</sup> All commercial applicators must maintain records with respect to application of pesticides.<sup>2748</sup>

The commissioner has the authority to adopt regulations to carry out the provisions of this act.<sup>2749</sup> The commissioner is required to appoint an advisory committee, by regulation, to advise and assist the commissioner in developing regulations and plans for implementing the provisions of the act and a pesticide regulatory program to meet the requirements of FIFRA.<sup>2750</sup> The act imposes both a monetary fine and a prison term on violators of the act.<sup>2751</sup>

**Disposal of pesticides.**—The Mississippi Waste Pesticide Disposal Act of 1993<sup>2752</sup> requires the Mississippi Department of Agriculture and Commerce to develop and administer a Waste Pesticide Disposal Program (subject to the availability of funds).<sup>2753</sup> This program will not apply to disposal of pesticides that may be returned to the seller or manufacturer of such pesticides at no disposal cost to the person returning such pesticides.<sup>2754</sup> Moreover, the department must establish an advisory committee, consisting of ten persons, to advise the department on the development and administration of a statewide waste pesticide disposal program.<sup>2755</sup>

The department is authorized to promulgate appropriate rules and regulations to carry out the provisions of this act.<sup>2756</sup>

**Wisconsin (region 4).**—The following provisions are applicable to the manufacture and distribution of pesticides in Wisconsin:

- All manufacturers and labelers must obtain a license from the Wisconsin Department of Agriculture before engaging in such activities. This requirement does not apply to—
  - the sale or distribution of pesticides at wholesale or retail in the immediate, unbroken container of licensed manufacturers;
  - the sale of pesticides or active ingredients to licensed manufacturers for use as a basic ingredient in the manufacture or formulation of another pesticide;
  - the blending of fertilizer-pesticide mixtures in compliance with the registered pesticide label at the customer's request, provided that such mixtures will not be resold or redistributed.<sup>2757</sup>

<sup>2746</sup>Id. § 69-23-111.

<sup>2747</sup>PENN STAT. ANN. § 69-23-115.

<sup>2748</sup>Id. § 69-23-117.

<sup>2749</sup>Id. § 69-23-109 (Supp. 1993), 69-23-131(1991).

<sup>2750</sup>Id. § 69-23-133.

<sup>2751</sup>Id. § 69-23-129.

<sup>2752</sup>Id. § 69-23-301 through 69-23-313 (Supp. 1993).

<sup>2753</sup>Id. § 69-23-305 (Supp. 1993).

<sup>2754</sup>Id.

<sup>2755</sup>Id. § 69-23-309.

<sup>2756</sup>Id. § 69-23-305.

<sup>2757</sup>WIS. CODE ANN. § 94.68 (West 1990 & Supp. 1993).

- Primary producer<sup>2758</sup> must pay an annual well compensation fee.<sup>2759</sup>
- Dealers and distributors of restricted-use pesticides must be licensed.<sup>2760</sup>
- Commercial application businesses must obtain a license from the department.<sup>2761</sup>
- Individual commercial applicators must secure license from the Department. This requirement does not apply to a private applicator who applies pesticides solely as a private applicator or only on an occasional or incidental basis as a commercial applicator.<sup>2762</sup>
- Private and commercial applicators must be certified. The Department is required to adopt standards for the training and certification of private and commercial applicators. Moreover, certified commercial applicators must maintain records of amounts, dates, types, places, and uses of all pesticides.<sup>2763</sup>

The Wisconsin pesticides law prescribes penalties for a number of prohibited acts. However, these penalties do not apply to the following:<sup>2764</sup>

- Any carrier while lawfully engaged in transporting a pesticide, provided that the carrier, upon request, allows the Department to copy all records showing the transactions in and movement of the pesticides or devices.
- Public officials of this state and the Federal Government while engaged in the performance of their official duties in administering state or Federal pesticide laws or regulations or while engaged in pesticide research.
- Persons using or possessing a pesticide in accordance with the terms and conditions of an experimental use permit.
- Articles consigned for shipment to another state or for export to a foreign country, when prepared or packed according to the specifications or direction of the purchaser.
- Persons shipping a substance or mixture of substances only for the conduct of screening tests to determine its usefulness or value as a pesticide or its toxicity or other properties, provided that such persons do not expect to receive any pest control benefit from its uses.

**Iowa (region 5).**—Under the Pesticide Act of Iowa,<sup>2765</sup> the following provisions are applicable to all activities relating to pesticides:

- Commercial or public pesticide applicators must comply with all certification requirements before applying any pesticide or restricted use pesticide. Commercial applicators who apply pesticides to agricultural land may be exempted from the certification requirement for 21 days if they meet the requirements of a private applicator. Moreover, an employee of a food processing and distribution establishment is also exempted provided that at

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<sup>2758</sup>A primary producer is a licensee who manufactures an active ingredient that is used to manufacturer or produce a pesticide. WIS. CODE ANN. § 94.681 (West 1990).

<sup>2759</sup>Id. § 94.68 (West Supp. 1993).

<sup>2760</sup>WIS. CODE ANN. § 94.685.

<sup>2761</sup>Id. § 94.703 (West 1990).

<sup>2762</sup>Id. § 94.704.

<sup>2763</sup>Id. § 94.705.

<sup>2764</sup>Id. § 94.70.

<sup>2765</sup>Pesticide Act of Iowa, IOWA CODE ANN. §206.1 et seq. (West 1987 & Supp. 1993).

least one person holding a supervisory position is certified and the employer provides a program to train, test and certify persons who apply.<sup>2766</sup>

- Commercial, public, or private applicators must be tested before initial certification and re-examined every 3 years following the initial examination to obtain certification renewal.<sup>2767</sup>
- All commercial applicators must obtain a license for application of pesticides.<sup>2768</sup> As a requirement to obtain such license, the applicant must furnish evidence of a surety bond or insurance to the secretary.<sup>2769</sup> However, the exemptions from the licensing requirement include—

any farmer applying pesticides for the farmer or with ground equipment or manually for the farmer's neighbors;<sup>2770</sup>

persons using hand-powered or self-propelled equipment not exceeding 7 1/2 horsepower as determined by rules promulgated by the department to apply pesticides to lawns, or to ornamental shrubs and tress not in excess of 12 feet high;<sup>2771</sup> and

any doctor of veterinary medicine applying pesticides to animals during the normal course of veterinary practices.<sup>2772</sup>

Nonresident applicators applying for a license must file a written power of attorney designating the Secretary of State as the agent of such nonresident.<sup>2773</sup>

A commercial applicator must pass an examination demonstrating his or her knowledge of how to apply pesticides and the nature and effect of pesticides before issuance of the license.<sup>2774</sup>

- All public pesticide applicators are subject to the provisions of this act and the rules adopted and promulgated pursuant to the act.<sup>2775</sup> Thus, public applicators are subject to certification and licensing requirements. However, government research personnel are exempt from the licensing requirement when applying pesticide only to experimental plots.<sup>2776</sup>
- All pesticide dealers must obtain a license before acting in the capacity of a pesticide dealer.<sup>2777</sup>
- All pesticides distributed, sold, offered for sale in Iowa, or transported in intrastate commerce through any point in Iowa must be registered.<sup>2778</sup>
- All commercial applicators and certified commercial applicators must maintain records regarding the application of pesticides.<sup>2779</sup>

<sup>2766</sup>IOWA CODE ANN. § 206.5 (West Supp. 1993), § 206.7 (West 1987 & Supp. 1993).

<sup>2767</sup>Id. § 206.5 (West Supp. 1993), § 206.7 (West 1987 & Supp. 1993).

<sup>2768</sup>Id. § 206.6(1) (West 1987).

<sup>2769</sup>Id. § 206.13.

<sup>2770</sup>Id. § 206.18(3).

<sup>2771</sup>Id. § 206.18(4).

<sup>2772</sup>Id. § 206.18(5).

<sup>2773</sup>Id. § 206.6(2).

<sup>2774</sup>Id. § 206.6(3) (West Supp. 1993).

<sup>2775</sup>Id. § 206.6(6)(a) (West 1987).

<sup>2776</sup>Id. § 206.6(6)(b) (West Supp. 1993).

<sup>2777</sup>Id. § 206.8 (West 1987 & Supp. 1993).

<sup>2778</sup>Id. § 206.12.

<sup>2779</sup>Id. § 206.8 (West 1987).



The Iowa Secretary of Agriculture has the following mandatory duties and powers:

- To adopt, by rule, requirements for the examination, re-examination and certification of applicants.<sup>2780</sup>
- To require, by rule, that veterinarians licensed and practicing veterinary medicine in Iowa promptly report to the department any case of domestic livestock poisoning or suspected poisoning by agricultural chemicals.<sup>2781</sup>
- To declare as a pest any form of plant or animal life or virus that is injurious to plants, humans, or animals.<sup>2782</sup>
- To determine the proper use of pesticides, such as their formulations, times and methods of application, and other condition of use.<sup>2783</sup>
- To determine, in cooperation with municipalities, the proper notice to be given by a commercial or public applicator to occupants of adjoining property in urban areas before or after application of pesticides.<sup>2784</sup>
- To adopt proper rules providing guidelines for public bodies to notify adjacent property occupants concerning the application of herbicides to noxious weeds or other undesirable vegetation within highway rights-of-way.<sup>2785</sup>
- To establish civil penalties for violations by commercial applicators.<sup>2786</sup>
- To determine, by rule, the pesticides to be classified as restricted use pesticides.<sup>2787</sup>
- To designate areas with a history of concerns regarding nearby pesticide applications as pesticide management areas.<sup>2788</sup>

The secretary may do the following:

- Classify or subclassify certifications or licenses. However, in promulgating rules, the secretary must prescribe standards for certification of applicators of pesticides.<sup>2789</sup>
- Cooperate, receive grants-in-aid and enter into agreements with any agency of the Federal Government, of this State or its substitutions, or with any agencies of other states, or trade associations.<sup>2790</sup>
- Require, by rule, the reporting of significant pesticide accidents or incidents to a designated state agency.<sup>2791</sup>

The act provides that the pesticide will be confiscated if it—  
     is adulterated or misbranded;  
     has not been registered;  
     fails to bear on its label the required information; or

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<sup>2780</sup>IOWA CODE ANN. § 206.5 (West Supp. 1993).

<sup>2781</sup>Id. § 206.14(4) (West 1987).

<sup>2782</sup>Id. § 206.19(1).

<sup>2783</sup>Id. § 206.19.2 (West Supp. 1993).

<sup>2784</sup>Id. § 206.19(3) (West Supp. 1993).

<sup>2785</sup>Id. § 206.19(4).

<sup>2786</sup>Id. § 206.19(5).

<sup>2787</sup>Id. § 206.20 (West Supp. 1993).

<sup>2788</sup>Id. § 206.21(3).

<sup>2789</sup>Id. § 206.4 (West 1987).

<sup>2790</sup>Id. § 206.9 (West Supp. 1993).

<sup>2791</sup>Id. § 206.14 (West 1987).

is white powder pesticide and is not colored as required.<sup>2792</sup>

The device will also be confiscated if it is misbranded.<sup>2793</sup> However, these penalties do not apply to the following:<sup>2794</sup>

- Any carrier while lawfully engaged in transporting a pesticide within Iowa, if upon request, allows the secretary to copy all records showing the transactions.
- Public officials of Iowa and the Federal Government engaged in their official duties.
- The manufacturer or shipper of a pesticide for experimental use.

The act does not apply to any pesticides intended solely for export to a foreign country, when prepared or packed according to specifications and instructions of the purchaser.<sup>2795</sup> In addition, the act creates an advisory committee, consisting of nine members,<sup>2796</sup> which must assist the secretary and recommend rules regarding the sale, use, or misuse of agricultural chemicals to the secretary.<sup>2797</sup>

In 1987, the act was amended to require the Iowa Secretary of Agriculture to initiate a program of education and demonstration, and coordinate activities regarding such program, in the area of the agricultural use of fertilizers and pesticides.<sup>2798</sup> The education and demonstration programs must promote the widespread adoption of management practices that protect ground water.<sup>2799</sup> The Iowa Department of Agriculture and Land Stewardship, in cooperation with the Environmental Protection Division of the Iowa Department of Natural Resources, is required to develop a program for handling used pesticide containers, which reflects the state solid waste management policy hierarchy.<sup>2800</sup>

Furthermore, the act specifically prohibits all individuals from offering for sale, selling, purchasing, or using chlordane in Iowa as of January 1, 1989.<sup>2801</sup> The Iowa Department of Agriculture working together with the Department of Natural Resources, must identify existing stocks of chlordane, formulate recommendations for the safe disposal of existing stocks of chlordane, and make available those recommendations to the owners of existing stocks of chlordane.<sup>2802</sup> The act also prohibits all individuals from offering for sale, selling, purchasing, applying, or using a pesticide containing daminozide if such pesticide is sold, purchased, applied, or used for purposes of enhancing or improving a product produced or consumed.<sup>2803</sup>

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<sup>2792</sup>IOWA CODE ANN. § 206.16(1)(a) (West 1987).

<sup>2793</sup>Id. § 206.16(1)(b) (West 1987).

<sup>2794</sup>Id. § 206.18(1) (West 1987).

<sup>2795</sup>Id. § 206.18(2).

<sup>2796</sup>Id. § 206.23 (West 1987).

<sup>2797</sup>Id.

<sup>2798</sup>Id. § 206.24 (West Supp. 1993).

<sup>2799</sup>Id. § 206.24 (West Supp. 1993).

<sup>2800</sup>Id. § 206.25.

<sup>2801</sup>Id. § 206.32(1).

<sup>2802</sup>Id. § 206.32(2) (West Supp. 1993).

<sup>2803</sup>Id. § 206.33.

**Nebraska (region 5).**—Under the pesticide law of Nebraska, the following provisions are applicable to all activities relating to applications of pesticides:

- Public pesticide applicators must obtain a license and permit before applying any pesticide or restricted use pesticide.<sup>2804</sup>
- All individuals who use or supervise the use of any restricted use pesticides must be certified.<sup>2805</sup> Aircraft that apply pesticides must be certified.<sup>2806</sup>

**New Mexico (region 6).**—Under the Pesticide Control Act,<sup>2807</sup> to be enforced by the State Department of Agriculture, under the direction of the Board of Regents of New Mexico State University,<sup>2808</sup> the following provisions are applicable to all activities regarding pesticides in New Mexico:

- Each pesticide or device that is distributed must be registered. This requirement does not apply to a pesticide that is shipped from one location to another operated by the same person and used solely at such location as a constituent part to make a pesticide that is registered.<sup>2809</sup>
- Any person who is interested in conducting field tests using a pesticide must obtain an experimental use permit from the department.<sup>2810</sup>
- Before acting in the capacity of a pesticide dealer, such person must secure an annual pesticide dealer license from the department. This requirement does not apply to a licensed pesticide applicator who sells pesticides only as an integral part of his or her pesticide service. Moreover, each pesticide dealer must be responsible for the actions of any of his or her employees.<sup>2811</sup>
- Before acting in the capacity of a pest management consultant, such person must obtain an annual license. The licensing requirement does not apply to—  
licensed applicators and operators, and  
employees of Federal, State, and county agencies or municipalities when acting in their official capacities.<sup>2812</sup> Moreover, each applicant for a pest management consultant license must pass a written exam demonstrating his or her competency.<sup>2813</sup>
- All public pest management consultants, except Federal and State employees whose principal responsibilities are in pesticide research, must be licensed.<sup>2814</sup> Moreover, each applicant for a public pest management consultant license must pass a written exam demonstrating his or her competency.<sup>2815</sup>
- All commercial pesticide applicators must be licensed<sup>2816</sup> and secure a surety bond or insurance.<sup>2817</sup> Before acting in the capacity of an employee of a

<sup>2804</sup>Pesticides, NEB. REV. STAT. § 3-128 (1987).

<sup>2805</sup>Id. § 2-2620.

<sup>2806</sup>Id. § 3-128.

<sup>2807</sup>Pesticide Control Act, NEW MEXICO. STAT. ANN. § 76-4-1 et seq. (1981).

<sup>2808</sup>Id. § 76-4-2.

<sup>2809</sup>Id. § 76-4-6.

<sup>2810</sup>Id. § 76-4-7.

<sup>2811</sup>Id. § 76-4-13.

<sup>2812</sup>Id. § 76-4-14.

<sup>2813</sup>Id. § 76-4-16.

<sup>2814</sup>Id. § 76-4-15. A public pest management consultant is defined to mean any person who is employed by a government agency or municipality to act as a pest management consultant.

<sup>2815</sup>NEW MEXICO STAT. ANN. § 76-4-16.

<sup>2816</sup>Id. § 76-4-17.

<sup>2817</sup>Id. § 76-4-24.

commercial pesticide applicator, such person must obtain an operator license.<sup>2818</sup>

- All private applicators must comply with the certification requirement before using a restricted use pesticide. Certification may require that the applicant—
  - acknowledges and understands and will comply with the label precautions by signing a dealer's pesticide register;
  - obtain a user permit before purchase and use of the pesticide;
  - pass a written examination demonstrating his or her competency; and
  - obtain approval from the department for each application involving a specific risk to the environment.<sup>2819</sup>
- All noncommercial pesticide applicators must be licensed.<sup>2820</sup>
- Each licensed apparatus must bear a license plate or decal furnished by the Department.<sup>2821</sup>
- Each person issued a license or permit must keep such records.<sup>2822</sup>

However, except for the use of restricted use pesticides, the provisions of the act relating to licenses and requirements will not apply to any farmer or rancher owning and using a ground or manual apparatus to apply pesticides for his or her farmer or rancher neighbors.<sup>2823</sup>

The New Mexico Department of Agriculture has the following mandatory duties:

- To administer and enforce the provisions of this act and regulations promulgated by the Board of Regents of New Mexico State University.<sup>2824</sup>
- To direct the sampling and examination of pesticides or devices to determine if they comply with the requirements of the act.<sup>2825</sup>
- To provide annual inspection of any equipment used for application of pesticides by a commercial pesticide applicator.<sup>2826</sup>

The department is authorized to revoke or suspend the registration of any pesticide upon sufficient evidence that the registrant has used fraudulent or deceptive practices in the registration of the pesticide or in its distribution.<sup>2827</sup>

The department may also—

issue a *stop sale, use, or removal order* to the owner or distributor of a designated pesticide<sup>2828</sup> or  
 seek an order of seizure or condemnation of a pesticide in a court of competent jurisdiction.<sup>2829</sup>

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<sup>2818</sup>NEW MEXICO STAT. ANN. § 76-4-18.

<sup>2819</sup>Id. § 76-4-20.

<sup>2820</sup>Id. § 76-4-20.1.

<sup>2821</sup>Id. § 76-4-27.

<sup>2822</sup>Id. § 76-4-33.

<sup>2823</sup>Id. § 76-4-28.

<sup>2824</sup>Id. § 76-4-9.

<sup>2825</sup>Id. § 76-4-10.

<sup>2826</sup>Id. § 76-4-26.

<sup>2827</sup>Id. § 76-4-8.

<sup>2828</sup>Id. § 76-4-11.

<sup>2829</sup>Id. § 76-4-12.

All violators of any provision or requirement of the act or regulations adopted by the board will be subject to penalties. However, the penalties do not apply to a number of persons, including—

a carrier while lawfully engaged in transporting a pesticide (if such carrier permits the department to copy all records showing the transactions upon request),

State or Federal public officials while engaged in the performance of their official duties in administering State or Federal pesticide laws or regulations or while engaged in pesticide research, or

manufacturer or shipper of a pesticide for experimental use only by, or under the supervision of, a State or Federal agency.<sup>2830</sup>

Moreover, no pesticide or device will be deemed in violation of the act when intended solely for export to a foreign county and when prepared or packed according to the specifications or directions of the purchaser.<sup>2831</sup>

In addition, the Pesticide Control Act creates a pesticide advisory board, that is required to—

review pesticide regulations and pesticides in use or proposed to be used in New Mexico, and

advise which pesticides should not be registered, which should be designated restricted-use pesticides, and the uses to which restricted-use pesticides may be put.<sup>2832</sup>

**Texas (regions 6 & 7).**—Under the Texas Pesticide Regulation,<sup>2833</sup> the following provisions are required for pesticide activities:

- Each pesticide distributed in Texas must comply with the labeling requirement.<sup>2834</sup> Any word, statement or information appearing on the label must be conspicuous.<sup>2835</sup>
- Before a pesticide is distributed or delivered for transportation or is transported in intrastate commerce, the manufacturer or other person whose name appears on the pesticide's label must register the pesticide.<sup>2836</sup>

However, registration is not required for—

the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used in the second plant or warehouse as a constituent of a pesticide which is registered; and

a chemical compound being used only to develop plot data as to the possible pesticide action of the chemical.<sup>2837</sup>

<sup>2830</sup>NEW MEXICO STAT. ANN. § 76-4-35(A).

<sup>2831</sup>Id. § 76-4-35(B).

<sup>2832</sup>Id. § 76-4-36.

<sup>2833</sup>TEXAS AGRIC. CODE ANN. § 76.001 et seq. (West 1995).

<sup>2834</sup>Id. § 76.021.

<sup>2835</sup>Id. § 76.022.

<sup>2836</sup>Id. § 76.041.

<sup>2837</sup>Id. § 76.041. For content of registration application, Id. 76.042.

- Moreover, the Texas Department of Agriculture may register a pesticide for additional uses and methods of application not covered by regulation to meet a special local need.<sup>2838</sup>
- A person who engages in the business of distributing a restricted-use or state-limited-use pesticide must obtain a valid current pesticide dealer license. Application for a pesticide dealer license must also be accompanied by fees<sup>2839</sup> and the license must be displayed in the dealer's place of business.<sup>2840</sup> A licensed pesticide dealer must maintain records of each restricted-use and state-limited-use pesticide sold for 2 years.<sup>2841</sup>

However, the dealer's licensing requirement does not apply to—

a manufacturer or formulator of a pesticide who does not sell directly to the user;

a licensed pesticide applicator who distributes restricted-use or state-limited-use pesticides only as an integral part of the pesticide application business, and dispenses the pesticides only through equipment used in the pesticide application business; or

a Federal, State, county, or municipal agency that provides pesticides only for its own programs.<sup>2842</sup>

- A person cannot use a restricted-use or state-limited-use pesticide unless one is— licensed as a commercial applicator, noncommercial applicator, or private applicator; an individual acting under the direct supervision of a licensed applicator; or a certified private applicator.<sup>2843</sup>

Applicant for a commercial or noncommercial applicator license must pass an examination demonstrating competence.<sup>2844</sup> In addition, each applicant for a commercial applicator license must furnish the regulatory agency with evidence of an executed bond and liability insurance policy.<sup>2845</sup> Each commercial applicator and noncommercial applicator licensee must maintain records of the licensee's use of pesticides.<sup>2846</sup>

The department is designated as the lead agency for pesticide regulation in Texas. In cooperation with the U.S. EPA or any Federal agency responsible for implementation of a Federal pesticide law, the department must engage in a number of activities, including—

registering pesticides for use in Texas;

adopting lists of state-limited-use pesticides;

providing for training, certification, and licensure of all classes of pesticide applicators;

<sup>2838</sup>TEXAS AGRIC. CODE ANN. § 76.046.

<sup>2839</sup>Id. § 76.073.

<sup>2840</sup>Id. § 76.074.

<sup>2841</sup>Id. § 76.075.

<sup>2842</sup>Id. § 76.077.

<sup>2843</sup>Id. § 76.105. For information regarding commercial applicator license, see § 76.108; regarding noncommercial applicator license, see 76.109; regarding private applicator, see § 76.112.

<sup>2844</sup>Id. § 76.110.

<sup>2845</sup>Id. § 76.111.

<sup>2846</sup>Id. § 76.114.

enforcing pesticide laws and regulations governing the safe handling, use, storage, distribution, and disposal of pesticide products; and adopting rules to carry out the provisions of the Pesticide Regulation.<sup>2847</sup>

The department is also the lead agency in the regulation of pesticide use and application.<sup>2848</sup> The Texas Pesticide Regulation prohibits any city, town, county, or other political subdivision to adopt any ordinance, rule, or regulation regarding pesticide sale or use.<sup>2849</sup> However, this prohibition does not prevent the city, town, county, or other political subdivision to—

encourage locally approved and provided educational material concerning a pesticide;

zone for the sale or storage of such products;

adopt fire or building regulations as preventive measures to protect the public and emergency services personnel;

provide or designate sites for the disposal of such products;

route hazardous materials; or

regulate discharge to sanitary sewer systems.<sup>2850</sup>

The Texas Pesticide regulation considers the Agriculture Resources Protection Authority, composed of nine members, to be an agency of State Government. It is the coordinating body for the policies and programs of management, regulation, and control of pesticides conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission, and the Texas Structural Pest Control Board.<sup>2851</sup>

**Idaho (region 8).**—Under the Idaho Pesticides law,<sup>2852</sup> the following provisions are applicable to pesticides in Idaho:

- Each pesticide that is distributed must be registered annually with the Idaho Department of Agriculture. This registration requirement does not apply to a pesticide that—
  - is shipped intrastate from one plant or warehouse to another plant or warehouse operated by the same person and is used solely at such place or warehouse as a constituent part to make a pesticide which is registered;
  - is labeled for experimental use only under the applicable provision of the Federal Insecticide, Fungicide, and Rodenticide Act or of the Idaho Code;
  - is transported through Idaho to a destination outside of Idaho; and
  - is manufactured within Idaho only for the purpose of export.<sup>2853</sup>
- Each commercial applicator must obtain a commercial applicator's license. To qualify for one, the applicant must—
  - be at least 18 years old,

<sup>2847</sup>TEXAS AGRIC. CODE ANN. § 76.007.

<sup>2848</sup>Id. § 76.101.

<sup>2849</sup>Id. § 76.101.

<sup>2850</sup>Id. § 76.101.

<sup>2851</sup>Id. § 76.009.

<sup>2852</sup>IDAHO CODE ANN. § 22-340 et seq. (1977 & Supp. 1994).

<sup>2853</sup>Id. § 22-3402 (Supp. 1994).

- pass the department's examination to determine one's competence (must pay examination fee);
- show proof of financial responsibility; and
- pay an annual license and registration fee.<sup>2854</sup>
- Each commercial operator must obtain a commercial operator license. To qualify for one, the applicant must—
    - be at least 18 years old;
    - pass the department's examination to determine one's competence (must pay examination fee);
    - pay an annual license fee; and
    - be employed by a licensed commercial applicator.<sup>2855</sup>
  - Each limited applicator must be licensed. To be qualified, such applicant must—
    - be at least 18 years old,
    - pass the department's examination to determine his or her competence (must pay examination fee); and
    - pay an annual license fee.<sup>2856</sup>
  - Each private applicator must be licensed. To be qualified, such applicant must—
    - be at least 18 years old; and
    - pay a license fee and publicly hold themselves out as commercial applicators.
  - A number of exemptions from the licensing requirement exists for commercial applicator, commercial operator, limited applicator, and private applicator, including—
    - any farmer applying pesticides other than restricted-use pesticides who does not hold out as a commercial applicator;
    - any individual using hand-powered equipment to apply pesticides other than restricted-use pesticides to one's or others' lawns or ornamental trees and shrub and who does not hold out as a commercial applicator;
    - industry, governmental, University of Idaho research personnel, and extension research personnel who apply pesticides other than restricted-use pesticides to experimental plots, demonstrate the use of pesticides and do not publicly hold themselves out as commercial applicators; and
    - a veterinarian who applies pesticides as an integral part of his or her business and does not publicly hold out as a commercial applicator. Moreover, Federal, State, and other governmental agencies are exempt from the fee requirement.<sup>2857</sup>
  - Each pest control consultant must be licensed. To be qualified, the applicant must—
    - be at least 18 years old,

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<sup>2854</sup>IDAHO CODE ANN. § 22-3404(2).

<sup>2855</sup>Id. § 22-3404(3).

<sup>2856</sup>Id. § 22-3404(4) (Supp. 1994).

<sup>2857</sup>Id. § 22-3404(9).



pass the department's examination to determine his or her competence (must pay examination fee), and

pay an annual license fee.

- This licensing requirement does not apply to —  
a licensed limited applicator or commercial applicator; and  
an individual who recommends only the use of pesticides labeled for home and garden use.<sup>2858</sup> Again, Federal, State, and other governmental agencies are exempt from the fee requirement.<sup>2859</sup>
- Each pesticide dealer must obtain a license and must keep accurate sale and distribution records. The dealer must sell restricted-use pesticides only to licensed commercial applicators, limited applicators, private applicators, and dealers. This licensing requirement does not apply to a manufacturer's representative or wholesale distributor, provided that such exemptee does not have a warehouse in Idaho from which pesticides are sold, stored, or distributed. Federal, State, and other government agencies are exempt from the licensing and examination fees requirement. Moreover, the director can exempt the licensing and recordkeeping requirements, by regulation, if it is determined that licensing or recordkeeping is not necessary for selling the pesticide.<sup>2860</sup>
- Partially full or empty pesticide containers must be disposed of as prescribed by the Idaho Department of Health and Welfare.<sup>2861</sup>
- If the state is authorized by the administrator of EPA, the Secretary of Agriculture can issue an experimental permit to any person requesting such.<sup>2862</sup>

Interestingly, the Idaho Pesticides law allows establishment of a restricted area. It provides that, upon his or her own initiative or upon the petition of a number of owners or operators of the proposed area, the director can issue a proposal to establish a restricted area. A restricted area will be created if votes cast in favor of the creation constitute a two-thirds majority of votes.<sup>2863</sup>

The director is authorized to adopt appropriate regulations for carrying out the purpose and provisions of the Idaho Pesticides law.<sup>2864</sup> The Idaho Pesticides law specifically provides that no city, county, taxing district, or other political subdivision can adopt or continue in effect any ordinance, rule, regulation, resolution, or statute relating to pesticide sale, use, or application.<sup>2865</sup>

The law imposes both a monetary fine and a prison term on violators of the pesticides law.<sup>2866</sup> However, it also provides that any person who has exhausted all administrative remedies available and who is aggrieved by a final decision is entitled to a judicial review of a district court of competent jurisdiction.<sup>2867</sup>

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<sup>2858</sup>IDAHO CODE ANN. § 22-3405 (Supp. 1994).

<sup>2859</sup>Id. § 22-3405 (Supp. 1994).

<sup>2860</sup>Id. § 22-3413 (1977).

<sup>2861</sup>Id. § 22-3403 (Supp. 1994).

<sup>2862</sup>Id. § 22-3403.

<sup>2863</sup>Id. § 22-3419 (1977).

<sup>2864</sup>Id. § 22-3421 (Supp. 1994).

<sup>2865</sup>Id. § 22-3426.

<sup>2866</sup>Id. § 22-3423.

<sup>2867</sup>Id. § 22-3424 (1977).

**Utah (region 8).**—The Utah Pesticide Control Act<sup>2868</sup> prohibits any pesticide dealer from distributing a restricted-use pesticide without a license.<sup>2869</sup> To distribute a pesticide, the distributor must register such pesticide with the department.<sup>2870</sup>

The applicant must include in the application for registration the following information—

- the name and address of the applicant;
- the name of the pesticide;
- a complete copy of the label that will appear on the pesticide; and
- any other information deemed by the Utah Department of Agriculture as necessary for the safe and effective use of the pesticide.<sup>2871</sup>

Before approving the application for registration, the Utah Department of Agriculture may also require the applicant to submit the complete formula for any pesticide including active and inert ingredients.<sup>2872</sup> In addition to the requirements for general registration, a person who wants to register a pesticide to meet special local needs must prove to the department that—

- a special local need exists;
- the pesticide warrants the claims made for it;
- the pesticide, if used in compliance with commonly accepted practices, will not cause unreasonable adverse effect on the environment; and
- the proposed classification for use conforms to the applicable requirements set forth in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

However, the registration requirement is not required if the pesticide is distributed pursuant to an experimental use permit issued by the EPA.<sup>2873</sup>

The department is authorized to revoke or suspend the registration of any pesticide upon sufficient evidence that the registrant has used fraudulent or deceptive practices in the registration of the pesticide or in its distribution.<sup>2874</sup> It may also—

- issue a *stop sale, use, or removal order* to the owner or distributor of the designated pesticide;<sup>2875</sup> or
- seek an order of seizure or condemnation of a pesticide in a court of competent jurisdiction.<sup>2876</sup>

If condemnation is ordered by the court, the pesticide or equipment must be disposed of. However, before disposing of the pesticide or equipment, the violator has the opportunity to apply for the court's permission to relabel, reprocess, or otherwise bring the pesticide into conformation.<sup>2877</sup>

<sup>2868</sup>Utah Pesticide Control Act, UTAH CODE ANN. § 4-14-1 et seq. (as amended 1985).

<sup>2869</sup>Id. § 4-14-3(7).

<sup>2870</sup>Id. § 4-14-3(1).

<sup>2871</sup>Id. § 4-14-3(2).

<sup>2872</sup>Id. § 4-14-3(4).

<sup>2873</sup>Id. § 4-14-3(6).

<sup>2874</sup>Id. § 4-14-8(1).

<sup>2875</sup>Id. § 4-14-8(2).

<sup>2876</sup>Id. § 4-14-8(3).

<sup>2877</sup>Id. § 4-14-8(4).

The Utah Pesticide Control Act provides that each container of pesticide distributed in Utah must have a label including—

- the name, brand, or trademark under which it is distributed;
- an accurate statement of the ingredients;
- a warning or caution statement if necessary;
- the net weight or measure of the content;
- the name and address of the manufacturer, registrant, or person for whom the pesticide is manufactured;
- the EPA registration number assigned to each establishment;
- the Federal use classification under which the pesticide is registered or designated for *experimental use only*; and
- directions for use of the pesticide.<sup>2878</sup>

Moreover, if the pesticide is highly toxic, in addition to the general labeling requirements, the label must display—

- the skull and cross bones;
- the word "POISON" in red noticeably displayed on a background of distinctly contrasting color; and
- a statement of a practical treatment in case of poisoning by the pesticide.<sup>2879</sup>

Furthermore, the Utah Act creates the Pesticide Committee, which will be responsible for making recommendations to the commissioner regarding the promulgation of regulations regarding the sale, distribution, use, and disposal of pesticides.<sup>2880</sup> This committee is composed of eight persons appointed by the Governor, with the advice and consent of the Senate, for 4-year terms.<sup>2881</sup>

Under this act, the Utah Department of Agriculture has the authority to make and enforce regulations.<sup>2882</sup> Pursuant to this authority, the department has promulgated a set of rules, which became effective in July 1, 1994.<sup>2883</sup>

The rule requires all pesticide products distributed in Utah to be officially registered annually with the Utah Department of Agriculture<sup>2884</sup> and labeled as set forth under the Utah Pesticide Control Act.<sup>2885</sup> In addition, in more detail, it provides for the classification of pesticide applicators.<sup>2886</sup> Pesticide applicators are classified into three categories: commercial applicator, noncommercial applicator, and private applicator.

*A commercial applicator* is a person who uses any pesticide for hire or compensation.

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<sup>2878</sup>UTAH CODE ANN. § 4-14-4(1).

<sup>2879</sup>Id. § 4-14-4(2).

<sup>2880</sup>Id. § 4-14-10(4).

<sup>2881</sup>Id. § 4-14-10(1).

<sup>2882</sup>Id. § 4-14-6.

<sup>2883</sup>R68-7-1 et seq. (1994).

<sup>2884</sup>R68-7-2.A.

<sup>2885</sup>R68-7-3.

<sup>2886</sup>R68-7-5.

A *noncommercial applicator* is any person working as an individual or an employee of a firm or government agency who uses or demonstrates the use of any pesticide, and who is neither a commercial nor private applicator.

A *private applicator* is any person or employer who files an IRS Profit or Loss Farm Statement and who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented.<sup>2887</sup>

Based on the application site and the type of work they perform, commercial, and noncommercial applicators are further arranged in one or more of the following categories—

- Agricultural Pest Control;
- Forest Pest Control;
- Ornamental and Turf Pest Control;
- Seed Treatment;
- Aquatic Pest Control;
- Right-of-way Pest Control;
- Industrial, Institutional, Structural and Health-related Pest Control;
- Public Health Pest Control;
- Regulatory Pest Control;
- Demonstration, Consultation and Research Pest Control;
- Fumigation;
- Vertebrate Animal Pest Control; and
- Wood Destroying Pest Control.<sup>2888</sup>

All applicators must show competence in the use and handling of pesticides according to the hazards involved in their particular classification.<sup>2889</sup> All commercial applicators are required to obtain a license and pass the written examination.<sup>2890</sup> All noncommercial applicators are required to obtain a license.<sup>2891</sup> All private applicators are required to have a private applicator's certificate issued by the commissioner.<sup>2892</sup> Employees of Federal agencies wishing to be certified must qualify as noncommercial applicators by passing the appropriate examinations, unless the requirement is waived.<sup>2893</sup> In addition, a license is also required for all pesticide dealers.<sup>2894</sup>

**Oregon (region 9).**—The Oregon Legislature enacted the State Pesticide Control Act with the primary purpose of regulating the formulation, distribution, storage,

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<sup>2887</sup>R68-7-5.

<sup>2888</sup>R68-7-6.

<sup>2889</sup>R68-7-7.

<sup>2890</sup>R68-7-8.A.

<sup>2891</sup>R68-7-8.B.

<sup>2892</sup>R68-7-8.C.

<sup>2893</sup>R68-7-8.D.

<sup>2894</sup>R68-7-9.

transportation, application, and use of pesticides in the public interest, to be enforced by the State Department of Agriculture.<sup>2895</sup>

The Pesticide Control Act requires every pesticide, including each formula or formulation, manufactured, compounded, delivered, distributed, sold, offered, or exposed for sale in Oregon to be registered annually with the State Department of Agriculture.<sup>2896</sup> The registration requirement, however, does not apply to—

- the use and purchase of pesticides by the Federal Government or its agencies;
- the sale or exchange of pesticides between manufacturers and distributors;
- drugs, chemicals, or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences; and
- common carriers, contract carriers, or public warehousemen delivering or storing pesticides.<sup>2897</sup>

In addition to the registration requirement, each package or container of every pesticide must be labeled with a number of particulars including—

- the name and address of the manufacturer or the person for whom it was manufactured;
- the brand name or trademark under which the material is sold;
- the professed standard of quality of the material;
- the net weight or volume of the contents; and
- adequate and necessary directions for its proper and intended use.<sup>2898</sup>

In addition to this required information, any pesticide that is highly toxic must be labeled accordingly.<sup>2899</sup>

The Oregon Pesticide Control Act provides that all pesticide consultants, dealers, operators, applicators, private applicators, or trainees must obtain a license and certificate before the commencement of such activities.<sup>2900</sup> Moreover, pesticide operators must prepare and maintain records on forms approved by the Department of Agriculture.<sup>2901</sup> However, these requirements do not apply to the following:<sup>2902</sup>

- Manufacturers of materials engaged in research or experimental work on pesticides.
- Persons who engage in the business of a pesticide operator or applicator only in the application of any pollenicide.
- Agencies, instrumentalities, and political subdivisions of the United States or Oregon and their officers, agents, or employees acting within the scope of their authority (this exemption does not apply to pesticide operators applying pesticides with power-driven application equipment or devices under contract for such agencies, instrumentalities, or political subdivisions).

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<sup>2895</sup>State Pesticide Control Act, OR. REV. STAT. § 634.006 et seq. (1991).

<sup>2896</sup>Id. § 634.016.

<sup>2897</sup>Id. § 634.016(7).

<sup>2898</sup>Id. § 634.026(1).

<sup>2899</sup>Id. § 634.026(2).

<sup>2900</sup>Id. § 634.112 to 634.126.

<sup>2901</sup>Id. § 634.146(1).

<sup>2902</sup>Id. § 634.106.

- Counties, cities, or municipal corporations that only authorize or permit their employees and their pesticide equipment to apply pesticides on property owned or under control, supervision or jurisdiction of each such governmental body.
- A farmer or forest landowner applying pesticides, other than restricted-use or highly toxic pesticides, by use of equipment of the farmer or forest landowner for others on an occasional basis not amounting to a principal or regular occupation.
- 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.
- 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 in selling pesticides or selling or leasing equipment.
- Railroads, to the extent that the application of pesticides is by their regular employees, 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 must be under the direct supervision of a licensed public applicator.

A pesticide operator's license authorizes the licensee to engage in one or more of the classes of pest control or pesticide application business.<sup>2903</sup> An application for operator's license must be accompanied by the required fees and evidence of a public liability policy by an insurance company.<sup>2904</sup>

To receive an applicator's license, such applicator must—

- prove to the department that he or she is at least 18 years old;
- have had experience as a pesticide trainee, or have educational qualifications, experience or training, or have been licensed in Oregon as a pesticide applicator;
- pass the written examination or re-examination given by the department; and
- pay a required fee.<sup>2905</sup>

For a consultant license, a fee and a written examination or re-examination are required.<sup>2906</sup> For a dealer license, an annual license fee is required, and a separate license is required for each sales outlet or location.<sup>2907</sup>

To obtain a trainee certificate, the applicant must—

- be at least 18 years old;
- be employed by and working under the direct supervision and control of a licensed pesticide operator;
- be in compliance with the applicable provisions of this act and any regulations promulgated by the department; and

<sup>2903</sup>OR. REV. STAT. § 634.116(1).

<sup>2904</sup>Id. § 634.116(1)-(5).

<sup>2905</sup>Id. § 634.122.

<sup>2906</sup>Id. § 634.132.

<sup>2907</sup>Id. § 634.136.

pay a required fee.<sup>2908</sup>

Furthermore, for a private applicator certificate, the applicant must pay a designated fee and meet the certification standards established by the department.<sup>2909</sup>

Because all licenses and certificates are personal to the applicant, they are not transferable to any other person.<sup>2910</sup>

To carry out the purposes of intent of this act, the Oregon Department of Agriculture is authorized to do the following:<sup>2911</sup>

- Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee.
- Establish and maintain classifications of the various pesticides and pest control or pesticide application businesses to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators, and trainees.
- Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons to qualify for exemption of the license, certificate, and record keeping requirements.
- Establish and maintain classifications of pesticides and devices that are deemed to be highly toxic or restricted-use pesticides or devices.
- Establish and maintain types of pesticide consultant or applicator examinations and re-examinations, schedules for required re-examinations and other measures deemed necessary for fair and reasonable testing of applicants.
- Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend, or terminate the required liability insurance and the time.
- Establish the conditions and amounts allowed for deductible class in the liability insurance.
- 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, to participate in instruction or courses directly or indirectly related to their particular activities.
- 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 who are preparing to qualify for a pesticide license.
- Establish advisory groups or committees to assist the department to formulate policies, plans or regulations under this act.
- Establish registration fees for pesticide brands and formulae or formulations.
- Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied, or added to fertilizers, seed or grains.
- Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides to

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<sup>2908</sup>OR. REV. STAT. § 634.126.

<sup>2909</sup>Id. § 634.142.

<sup>2910</sup>Id. § 634.112(3).

<sup>2911</sup>Id. § 734.306.

protect humans, pollinating insects, bees, animals, crops, wildlife, land, or environment.

- Establish and maintain a system for certification of private applicators.

The Oregon Pesticide Control Act provides for the continuation of protected and restricted areas created by former law<sup>2912</sup> and the formation of new protected areas.<sup>2913</sup> The department can form a protected area after receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land situated within the proposed area.<sup>2914</sup>

In making the determination whether to establish a protected area or not, the department must consider a number of factors, including—

the agricultural and horticultural crops, wildlife, or forest industry to be affected and their locations;

the topography and climate of the proposed protected area; and

the characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.<sup>2915</sup>

When a protected area is established, it will be considered as a governmental subdivision of the State and a public body corporate, and have all the obligations and benefits set forth in the act.<sup>2916</sup> In addition, the protected area will be governed and administered by an area committee consisting of five members.<sup>2917</sup> The area committee has a number of mandatory duties including—

providing for surety bonds for all persons entrusted with funds or property of the protected area;

preparing and maintaining accurate and complete records of all activities, meetings, orders, and regulations of the protected area;

employing persons to assist the committee in its administration and enforcement activities;

promulgating regulations in consultation with the department;

carrying out the procedures for the establishment of a restricted area;

preparing annual reports and audits and making them public at annual meetings; and

receiving funds from any source and using the same to carry out and enforce the protected area.<sup>2918</sup>

In addition, the area committee is prohibited from engaging in the business of buying or selling pesticide.<sup>2919</sup> In addition to these mandatory obligations, the committee has the discretion to levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area.<sup>2920</sup>

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<sup>2912</sup>OR. REV. STAT. § 634.206.

<sup>2913</sup>Id. § 634.212.

<sup>2914</sup>Id. § 634.212(1).

<sup>2915</sup>Id. § 634.212(5).

<sup>2916</sup>Id. § 634.216.

<sup>2917</sup>Id. § 634.226(1).

<sup>2918</sup>Id. § 634.226(2)(b).

<sup>2919</sup>Id. § 634.226(2)(b).

<sup>2920</sup>Id. § 634.242.



The act allows any interested person to petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regulations of the protected area with the committee.<sup>2921</sup> Furthermore, the method to request increasing or decreasing the size of the protected area is similar to that of establishing the area.<sup>2922</sup>

The act prohibits a number of actions.<sup>2923</sup> Violators of any provisions of this act or any regulations promulgated by the department are subject to civil<sup>2924</sup> or criminal penalties, or both.<sup>2925</sup>

**California (region 10).**—The California Legislature enacted the Pest Control Operations law<sup>2926</sup> with the following purposes:<sup>2927</sup>

- To provide for the proper, safe, and efficient use of pesticides necessary for production of food and fiber and for the protection of public health and safety;
- To protect the environment from environmentally harmful pesticides by prohibiting, regulating, or controlling uses of such pesticides.
- To assure the agricultural and pest control workers of safe working conditions where pesticides are present.
- To permit agricultural pest control by competent and responsible licensees and permittees under strict control of the director and commissioners.
- To encourage the development and implementation of pest management systems.

The following provisions are applicable to pest control activities in California:

- All pesticide dealers must obtain a license from the director before engaging in such activities.<sup>2928</sup> However, this requirement does not apply to any Federal, State, or county agency for a consultant license that for a consultant license provides pesticide materials for agricultural use.<sup>2929</sup> A license fee must accompany application.<sup>2930</sup>
- To be qualified, the applicant must demonstrate to the director knowledge of the laws and regulations governing the use and sale of pesticides, and the applicant's duty in carrying on the business of a pesticide dealer.<sup>2931</sup> Moreover, each dealer must be responsible for the acts of one's employee(s).<sup>2932</sup>
- To engage in the business of pest control, each person must secure a pest control business license from the director.<sup>2933</sup> Each principal and branch office of a business licensed for pest control must employ at least one person in a supervisory-position who holds a qualified applicator license.<sup>2934</sup> However, a

<sup>2921</sup>OR. REV. STAT. § 634.226(4)(c).

<sup>2922</sup>Id. § 634.236.

<sup>2923</sup>§ 634.372.

<sup>2924</sup>Id. § 634.900 to 634.925.

<sup>2925</sup>Id. § 634.992.

<sup>2926</sup>CAL. FOOD & AGRIC. CODE § 14101 et seq. (West 1986 & Supp. 1996).

<sup>2927</sup>Id. § 11501 (West 1986).

<sup>2928</sup>Id. § 12101.

<sup>2929</sup>Id. § 12102.

<sup>2930</sup>Id. § 12103.

<sup>2931</sup>Id. § 12106.

<sup>2932</sup>Id. § 12110.

<sup>2933</sup>Id. § 11701 (West Supp. 1996).

<sup>2934</sup>Id. § 11701.5.

person who is regularly engaged in the business of tree surgery does not need to obtain a license to remove diseased or infested tissues or apply disinfectants to wounds or cavities incidental to tree surgery.<sup>2935</sup>

- A person who engages in the business of pest control is also required to be registered with the commissioner.<sup>2936</sup>
- Each person who operates aircraft in pest control must hold a valid pest control aircraft pilot's certificate.<sup>2937</sup>
- Each agricultural pest control advisor must obtain a license from the director. However, this requirement does not apply to Federal, State, county officials and University of California personnel engaged in official duties relating to agricultural use.<sup>2938</sup> Each agricultural pest control advisor must register with the county agricultural commissioner before engaging in such activity.<sup>2939</sup>

**Tennessee (regions 11 & 12).**—Regarding the distribution, sale, or offer for sale of pesticides, the Tennessee Insecticide, Fungicide, and Rodenticide Act<sup>2940</sup> prohibits:

- Any pesticide being distributed, sold, or transported without proper registration.<sup>2941</sup>
- Any pesticide being distributed, sold, or transported without proper labeling.<sup>2942</sup>
- Any pesticide containing any substance(s) in quantities highly toxic to man, unless the label bears such warning.<sup>2943</sup>
- Any pesticide which is adulterated or misbranded.<sup>2944</sup>

However, these prohibitions do not apply to—

the use and purchase of pesticides by the Federal Government or its agencies (does not apply to any preparation, drug or chemical intended to be used for medicinal use or for toilet purposes);

common carriers, contract carriers or public warehousemen delivering or storing pesticides (does not apply to any preparation, drug or chemical intended to be used for medicinal use or for toilet purposes);

a manufacturer or shipper of pesticide for experimental use only; and

a guarantor who purchases and receives in good faith the article in the same unbroken package.<sup>2945</sup>

If noncompliance is determined, the commissioner may issue and enforce a *stop sale, use, or removal* order to the owner or custodian of any lot of pesticide.<sup>2946</sup> Any lot of pesticide not in compliance with the act is subject to seizure on complaint of the Commissioner to a court of competent jurisdiction.<sup>2947</sup> If the court determines

<sup>2935</sup>CAL. FOOD & AGRIC. CODE § 11710 (West 1986).

<sup>2936</sup>Id. § 11732.

<sup>2937</sup>Id. § 11901.

<sup>2938</sup>Id. § 12001.

<sup>2939</sup>Id. § 12002.

<sup>2940</sup>Tennessee Insecticide, Fungicide, and Rodenticide Act, § 43-8-101 et seq. (1987 & Supp. 1993).

<sup>2941</sup>Id. § 43-8-103(1) (Supp. 1993).

<sup>2942</sup>Id. § 43-8-103(2) (Supp. 1993).

<sup>2943</sup>Id. § 43-8-103(3).

<sup>2944</sup>Id. § 43-8-103(4).

<sup>2945</sup>Id. § 43-8-109 (1987).

<sup>2946</sup>Id. § 43-8-110.

<sup>2947</sup>Id. § 43-8-111 (1987).

that the pesticide is in violation of the act, it may order the condemnation of the pesticide. However, before condemning the pesticide product, the court must give the claimant an opportunity to apply to the court for release of the pesticide or for permission to bring it into compliance with the act.<sup>2948</sup>

The act provides that all cities, towns, counties, or other political subdivisions are restrained from adopting or continuing any ordinance, rule, regulation, or statute regarding pesticide sale or use.<sup>2949</sup>

Under the act, the following provisions are applicable to activities regarding dealing in pesticides:

- All pesticide dealers must obtain dealer licenses before engaging in such activities.<sup>2950</sup> To be qualified for the original license, each applicant must show, upon examination, knowledge of pesticides and the usefulness and hazards of pesticides, competence as a pesticide dealer and knowledge of the laws and regulations governing the use and sale of pesticides.<sup>2951</sup>
- All pesticide dealers must submit to the commissioner names of all persons employed by them who sell or solicit the sale of restricted-use pesticides. Such dealers will be responsible for the action of their employees.<sup>2952</sup>
- All licensed pesticide dealers must maintain records necessary to identify all purchasers of restricted-use pesticides.<sup>2953</sup>

The following provisions are applicable to aerial application of pesticides in Tennessee:

- Before operating as a commercial aerial applicator, each person must obtain a license from the commissioner. Each aircraft used in application of pesticides and each pilot operating such aircraft must be licensed.<sup>2954</sup> The specified fee must accompany the license application.<sup>2955</sup>
- Each licensee-pilot must hold a valid Federal Aviation Administration agronaut license and prove his or her proficiency to the commissioner.<sup>2956</sup>
- Each application for aircraft license must be accompanied by an acceptable liability insurance policy.<sup>2957</sup>

However, the above requirements do not apply—

to local, State, or Federal Government aerial operations,

to legitimate agricultural experiments that are being conducted as recognized by the commissioner, and

if a landowner wishes to make an application of pesticides with a personally owned aircraft on personally owned land.<sup>2958</sup>

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<sup>2948</sup>TENN. CODE ANN. § 43-8-111 (1987).

<sup>2949</sup>Tennessee Insecticide, Fungicide, and Rodenticide Act, TENN. CODE ANN. § 43-8-114 (Supp. 1993).

<sup>2950</sup>Id. § 43-8-201 (1987).

<sup>2951</sup>Id. § 43-8-203 (1987).

<sup>2952</sup>Id. § 43-8-205 (1987).

<sup>2953</sup>Id. § 43-8-206 (Supp. 1993).

<sup>2954</sup>Id. § 43-8-303(a) (Supp. 1993).

<sup>2955</sup>Id. § 43-8-303(b) (Supp. 1993).

<sup>2956</sup>Id. § 43-8-304(a) (1987).

<sup>2957</sup>Id. § 43-8-304(b) (1987).

<sup>2958</sup>Id.

## Seed laws

All 17 states surveyed have seed control laws, which are similar to each other in many ways. They require each person engaging in the business of a wholesale seed selling to obtain an annual permit. Each container of seed sold or distributed must comply with the labeling requirement. Each person whose name appears on the label as handling agricultural or vegetable seed ("labeler") must secure a seed labeler's license and keep complete records for 2 years of each lot handled, and keep a file sample of each lot of seed for 1 year after final disposition of the lot.

Noncompliant lots of seed will be subject to seizure on complaint of the authorized official to a court of competent jurisdiction. If the court finds the seed to be in violation of the law and orders condemnation of the seed, such seed will be denatured, processed, destroyed, relabeled, or otherwise disposed of. However, before the disposal of noncompliant seeds, the court must give the claimant an opportunity to apply to the court for the release of the seed or permission to condition or relabel it to bring it into compliance with the laws.

However, the laws provide for a number of exemptions from the application of these seed control laws, including—

- seed or grain not intended for sowing purposes;
- seed in storage in, or being transported, or consigned to a cleaning or processing establishment for cleaning or processing;
- any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier;
- seed sold by one farmer to another if the seed has neither been advertised for sale nor delivered through a carrier; and
- grain sold by farmers for cover crop purposes and not delivered through a common carrier.

Only the laws of Alabama, Texas, and Idaho provide for arbitration to assist farmers and other seed purchasers and seed dealers in determining the validity of complaints of the seed purchasers against seed dealers relating to the quality of the seeds.

In addition to these state seed laws, Utah also legislated the Noxious Weed Act to combat plants that are harmful to crops, livestock, land, and public health.

**Delaware (region 1).**—The Delaware Seed law,<sup>2959</sup> to be administered by the Delaware Department of Agriculture,<sup>2960</sup> imposes a different set of labeling requirements on agricultural, vegetable and flower seeds,<sup>2961</sup> and tree and shrub seeds<sup>2962</sup> that are sold, offered for sale, exposed for sale, or transplanted within Delaware.

However, the following are exempt from the Delaware labeling requirement:<sup>2963</sup>

- Seed or grain not intended for sowing purposes.

<sup>2959</sup>DEL. CODE ANN. § 1501 through 1512 (1985 & Supp. 1992).

<sup>2960</sup>Id. § 1511.

<sup>2961</sup>Id. § 1502.

<sup>2962</sup>Id. § 1503.

<sup>2963</sup>Id. § 1506.

- Seed in storage in, or being transported or consigned to a cleaning or processing establishment for cleaning or processing.
- Any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier.
- Seed sold by one farmer to another if the seed has neither been advertised for sale nor delivered through a carrier.
- Grain sold by farmers for cover crop purposes and not delivered through a common carrier.

The Delaware Seed law requires that each person whose name appears on the label as handling agricultural or vegetable seed must keep complete records of each lot handled for 2 years, and keep a file sample of each lot of seed for 1 year after final disposition of the lot.<sup>2964</sup>

The tree and shrub labeling requirement and the record-keeping requirement will not apply to tree seed produced by a consumer.<sup>2965</sup> Moreover, unless the consumer has failed to ensure the identity of the seed, an individual will not be subject to penalties imposed by the Delaware Seed law for having sold or offered for sale seed that was incorrectly labeled or represented if such seed cannot be identified by examination.<sup>2966</sup>

Noncompliant lots of seed will be subject to seizure on complaint of the department to a court of competent jurisdiction. If the court finds the seed to be in violation of the Delaware Seed law and orders condemnation of the seed, such seed must be denatured, processed, destroyed, relabeled, or otherwise disposed of.<sup>2967</sup> Moreover, violation of any provision of this law will be punishable by a fine not exceeding \$100 for the first offense and not exceeding \$250 for each subsequent similar offense.<sup>2968</sup>

**Maryland (region 1).**—The Maryland Regulation of Sale and Transportation of Seed law<sup>2969</sup> requires each person engaging in the business of selling seed wholesale to obtain an annual permit first.<sup>2970</sup>

The permit application must be accompanied by a flat \$50 permit fee.<sup>2971</sup> This requirement also applies to out-of-state wholesale seed selling doing business in Maryland.<sup>2972</sup> The Maryland Secretary of Agriculture may revoke and suspend any permit issued upon satisfactory proof that the seed selling has violated any provisions of the seed regulation or any departmental rules and regulations.<sup>2973</sup> The secretary may also issue a stop-sale order to any person selling seed wholesale who offers or exposes seed for sale without holding a valid permit.<sup>2974</sup> In addition, each container of agricultural, vegetable, herb, flower, tree, or shrub seeds that is sold,

<sup>2964</sup>Tennessee Insecticide, Fungicide, and Rodenticide Act, TENN. CODE ANN. § 1505.

<sup>2965</sup>Id. § 1506.

<sup>2966</sup>Id. § 1506.

<sup>2967</sup>Id. § 1508.

<sup>2968</sup>Id. § 1511.

<sup>2969</sup>MD. CODE ANN., AGRIC. § 9-201 et seq. (1985 & Supp. 1994).

<sup>2970</sup>Id. § 9-204(a) (Supp. 1994).

<sup>2971</sup>Id. § 9-204(c).

<sup>2972</sup>Id. § 9-204(d).

<sup>2973</sup>Id. § 9-204(e).

<sup>2974</sup>Id. § 9-204(f).

offered, or exposed for sale, or transported in Maryland must comply with the labeling requirement.<sup>2975</sup>

However, the Regulation of Sale and Transportation of Seed law does not apply to—  
seed or grain not intended for planting purposes;

seed sold by one farmer to another if the seed has neither been advertised for sale nor delivered through a carrier;

any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier.

Moreover, unless the farmer has failed to ensure the identity of the seed, an individual will not be subject to penalties imposed by the Maryland regulation of sale and transportation of seed.<sup>2976</sup>

Noncompliant lots of seed will be subject to seizure on complaint of the secretary to a court of competent jurisdiction. If the court finds the seed to be in violation of the Maryland law and orders condemnation of the seed, such seed must be denatured, processed, destroyed, relabeled, or otherwise disposed of.<sup>2977</sup>

**Pennsylvania (region 1).**—The Pennsylvania Seed Act of 1965<sup>2978</sup> was enacted to regulate the selling, offering, or exposing for sale of agricultural, vegetable, flower, tree, and shrub seed and seed mixtures for seeding purposes.

The act provides that to sell, offer or expose for sale the regulated seeds, the package or container of such regulated seed must comply with the label requirement.<sup>2979</sup> The test to determine the percentage of germination required by the label requirement must have been completed within 9 months before the seed is offered for sale.<sup>2980</sup>

However, the labeling requirement does not apply to—  
potatoes or grain not intended for seeding purposes; or  
seed in storage in, or being transported or consigned to, a seed cleaning or processing establishment for cleaning or processing.<sup>2981</sup>

The act specifically proscribes a number of activities, including—  
detaching, altering, defacing, or destroying any label as required by this act or any regulations promulgated pursuant to this act;

disseminating any false or misleading advertisement concerning the regulated seeds;

hindering or obstructing any authorized person in the performance of the duty; and

failing to comply with a *stop-sale* order.<sup>2982</sup>

The Pennsylvania Department of Agriculture has the authority and power to—  
enforce all provisions of this act, and

<sup>2975</sup>MD. CODE ANN., AGRIC § 9-206, 9-207, 9-208, 9-209.

<sup>2976</sup>Id. § 9-211.

<sup>2977</sup>Id. § 9-212.

<sup>2978</sup>Pennsylvania Seed Act of 1965, PENN. STAT. ANN. § 285-1 through 285-11 (Supp. 1993).

<sup>2979</sup>Id. § 285-3.

<sup>2980</sup>Id. § 285-4.

<sup>2981</sup>Id. § 285-6.

<sup>2982</sup>Id. § 285-5.

prescribe, modify and enforce such reasonable rules, regulations, standards, tolerances, and orders that it deems necessary to carry out the provisions of this act.<sup>2983</sup>

Noncompliance with this act will result in seizure and disposition of violating seeds.<sup>2984</sup>

The first or second offense of violation of any provision of this act or any regulations promulgated pursuant to such act results in a fine of not more than \$200 for each offense, the default of which will result in an imprisonment for a period not exceeding 30 days.

The third or subsequent offense results in a fine of not less than \$200 nor more than \$500, the default of which will result in an imprisonment for a period not exceeding 60 days.<sup>2985</sup>

In addition, upon request of the department, the Pennsylvania Attorney General may petition the court to enjoin the conduct of a business violating the provisions of this act.<sup>2986</sup>

In Pennsylvania, any grower of potatoes, agriculture, vegetable, tree and shrub seeds, or plants vegetatively propagated is required to apply to the department for inspection and certification of his or her crop for seed or propagation purposes.<sup>2987</sup>

**Alabama (Region 2).**—Under the Alabama Seed law,<sup>2988</sup> the following provisions are applicable to seed activities:

- Each person who sells or distributes agricultural, vegetable, flower, tree, shrub and herb seed to retail seed dealers, farmers, or others must obtain an annual permit from the Commissioner of Agriculture and Industries to engage in such business.<sup>2989</sup> If such person fails to secure the permit, that person will be subject to penalties or injunctive proceedings, or both.<sup>2990</sup>
- Each container of seed sold or distributed must comply with the labeling requirement. The Alabama Seed law imposes different labeling requirements for different types of seed.<sup>2991</sup>
- All hybrid seed corn sold or offered for sale must be certified by a recognized seed certifying agency or produced by a person having a bona fide corn breeding program.<sup>2992</sup>
- A seed dealer must keep records of receipts, sale, and delivery of all seed, other than retail sales and deliveries, ready for examination by an authorized agent of the department.<sup>2993</sup>

<sup>2983</sup>Pennsylvania Seed Act of 1965, PENN. STAT. ANN. § 285-7.

<sup>2984</sup>Id. § 285-8.

<sup>2985</sup>Id. § 285-9.

<sup>2986</sup>Id. § 285-10.

<sup>2987</sup>Id. § 292.

<sup>2988</sup>ALA. CODE § 2-26-1 et seq. (1977 & Supp. 1993).

<sup>2989</sup>Id. § 2-26-5 (1977).

<sup>2990</sup>Id. § 2-26-6 (1977).

<sup>2991</sup>Id. § 2-26-7 (1977).

<sup>2992</sup>Id. § 2-26-9 (1977).

<sup>2993</sup>Id. § 2-26-10 (1977).

The Alabama Seed law prohibits all persons from distributing or selling the following in Alabama:<sup>2994</sup>

- Agricultural or vegetable seed that has not been tested within 9 months to determine the percentage of germination according to the labeling requirement.
- Agricultural, vegetable, herb, tree, shrub, or flower seed that does not comply with the labeling requirement or contains false or misleading labeling.
- Agricultural, vegetable, herb, tree, shrub, or flower seed pertaining to which there has been a false or misleading advertisement.
- Agricultural or vegetable seed that contains prohibited noxious weed seed or restricted noxious weed seed exceeding the prescribed limitations.
- Agricultural or vegetable seed that contains weed seed exceeding 2 percent of the whole by weight (unless provided otherwise by the board's rules or regulations).
- Agricultural seed that has a total percentage of germination and hard seed of less than 60 percent, except dallisgrass, Johnsongrass, and seed released by U.S. Customs (unless provided otherwise by the board's rules or regulations).
- Any agricultural, vegetable, herb, tree, shrub, or flower seed, unless the person selling or distributing such seed has obtained an annual permit.
- Oat or sorghum seed not complying with the regulations promulgated by the board.
- Any hybrid seed corn unless such seed is certified.
- Any tree or shrub seed not in compliance with the rules and regulations promulgated by the board.

However, the Alabama Seed law does not apply to the following:<sup>2995</sup>

- Seed when sold directly to and in the presence of the consumer and taken from the container properly labeled in compliance with the provisions of the Alabama Seed law.
- Seed or grain not intended for sowing or planting purposes.
- Seed in storage in, or being transported or consigned to a cleaning or processing establishment for cleaning or processing.
- Seed produced in Alabama and sold by the farmer who produced such seed to another farmer, provided that such seed will not be advertised for sale by a paid advertisement.
- Seed sold or distributed by the grower, unless such grower is also a dealer, to a local merchant in due course of trade. Such merchants must resell the seed in due course of trade without advertising and without holding themselves as dealers.

The State Board of Agriculture and Industries has the authority to prescribe and adopt rules and regulations governing the method of sampling, inspecting, analyzing, testing, and examining agricultural, vegetable, flower, tree, shrub, and herb seed and the tolerances and limitations.<sup>2996</sup> Within the Department of

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<sup>2994</sup>ALA. CODE § 2-26-11(a) (1977).

<sup>2995</sup>Id. § 2-26-4.

<sup>2996</sup>Id. § 2-26-3.



Agriculture and Industries, there is a seed division and test laboratory, which is authorized to execute the provisions and requirements of the Seed law.<sup>2997</sup>

However, the responsibility for enforcement of the rules and regulations governing the sale or distribution of seed is the sole responsibility of the department.<sup>2998</sup> The commissioner of Alabama Agriculture and Industries also has the authority to promulgate rules and regulations for removal of fungi and noxious weeds from seeds and small grains.<sup>2999</sup>

Any lot of agricultural, vegetable, herb, tree, shrub, or flower seed not in compliance with the provisions of the Alabama Seed law will be subject to suspension from sale, seizure and condemnation.<sup>3000</sup> Moreover, violation of the provisions of the Alabama Seed law or rules or regulations promulgated will be deemed a misdemeanor.<sup>3001</sup>

The Alabama Seed law also provides for arbitration to assist farmers and other seed purchasers and seed dealers to determine the validity of complaints of the seed purchasers against seed dealers relating to the quality of the seed.<sup>3002</sup> It creates a Seed Investigation and Arbitration Committee, consisting of five members,<sup>3003</sup> to be responsible for the arbitration.<sup>3004</sup>

Arbitration procedures are in the following order:<sup>3005</sup>

1. The purchaser can begin arbitration by filing with the commissioner a sworn complaint (and a nonrefundable fee) and sending a copy of the complaint to the seller.
2. Within 10 days of the complaint's receipt, the seller must file with the commissioner an answer to the complaint and send a copy of the answer to the purchaser.
3. The commissioner then refers the complaint and answer to the board of arbitration for investigation, findings, and recommendations.
4. Upon referral of the complaint and answer, the board must make a prompt and full investigation of the matter complained. The report must include findings of fact, conclusions of law and recommendations as to costs, if any.
5. Once the board has filed the report, the commissioner must promptly transmit the report to all parties.

In any litigation involving a complaint that has been arbitrated, any party may introduce the arbitration's report as evidence found in the report; the court may take into account any findings of the board of arbitration.<sup>3006</sup>

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<sup>2997</sup>ALA. CODE § 2-26-4 (1977).

<sup>2998</sup>Id. § 2-26-4 (1977).

<sup>2999</sup>Id. § 2-26-30 (1977).

<sup>3000</sup>Id. § 2-26-12.

<sup>3001</sup>Id. § 2-26-3 (1977).

<sup>3002</sup>Id. § 2-26-70 (Supp. 1993).

<sup>3003</sup>Id. § 2-26-71 (Supp. 1993).

<sup>3004</sup>Id. § 2-26-73.

<sup>3005</sup>Id. § 2-26-74.

<sup>3006</sup>Id. § 2-26-76.

**Georgia (region 2).**—Under the Georgia Seed law,<sup>3007</sup> which is enforced by the Commissioner of Agriculture,<sup>3008</sup> the following provisions are applicable to activities regarding seeds in Georgia:

- Each package or container of agricultural or vegetable seed that is sold, offered for sale, exposed for sale, or transported within Georgia must comply with the labeling requirement.<sup>3009</sup>
- Each person whose name or code number appears on the label as handling seeds must keep complete records for 2 years of each lot of agricultural or vegetable seed handled. Such person must keep a file sample of each lot of seed for 1 year after final disposition of such seed.<sup>3010</sup>

The commissioner has the authority to promulgate and enforce such rules and regulations as maybe considered necessary to carry out the Georgia Seed law.<sup>3011</sup> Moreover, among other powers, the commissioner is authorized to issue a license to each retail and wholesale seed dealer,<sup>3012</sup> and to provide different treatment to itinerant vendors.<sup>3013</sup>

The Georgia Seed law also creates a Seed Advisory Committee, composed of ten members, to serve in an advisory capacity to the commissioner in promulgating rules and regulations pursuant to this law.<sup>3014</sup>

Violation of any provisions of the Georgia Seed law or any promulgated regulations will result in seizure or disposition of seed.<sup>3015</sup> The commissioner may seek a temporary or permanent injunction restraining any person from violating or continuing to violate the law from the court of competent jurisdiction.<sup>3016</sup> However, the act exempts the person who sold or offered for sale seed that is incorrectly labeled or represented as to kind, species, variety, or origin from the penalties set forth if the seed cannot be identified by examination, unless the person has failed to take necessary steps to ensure the seed's identity.<sup>3017</sup>

Georgia also allows for certification of seed and plants. The certification law was enacted with the purpose of protecting the purchasers of seed by requiring seed dealers to be registered and licensed by the commissioner.<sup>3018</sup> To effectuate this purpose, the dean of the College of Agriculture of the University of Georgia is authorized to provide for seed, plant, and variety certification and labeling.<sup>3019</sup>

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<sup>3007</sup>GA. CODE ANN. § 2-11-20 et seq. (Michie 1982).

<sup>3008</sup>Id. § 2-11-25.

<sup>3009</sup>Id. § 2-11-22.

<sup>3010</sup>Id. § 2-11-24.

<sup>3011</sup>Id. § 2-11-28.

<sup>3012</sup>Id. § 2-11-26.

<sup>3013</sup>Id. § 2-11-27.

<sup>3014</sup>Id. § 2-11-29.

<sup>3015</sup>Id. § 2-11-30.

<sup>3016</sup>Id. § 2-11-31.

<sup>3017</sup>Id. § 2-11-32.

<sup>3018</sup>Id. § 2-11-50.

<sup>3019</sup>Id. § 2-11-52.

**Arkansas (region 3).**—Under the Arkansas Seed law,<sup>3020</sup> the State Plant Board is authorized to investigate and certify as to varietal purity and fitness for planting, agricultural seed on request of the grower. The board is required to set up, by rules and regulations, one or more classifications of seed, designating the classifications as *Registered* and *Certified* or any other designations.<sup>3021</sup>

If required by the board, any person who applies for certification of seed must produce satisfactory evidence as to character, qualifications as a seed breeder, and possession of facilities for the growing and handling of purebred seed.<sup>3022</sup> Such person whose seed has met the standards set up by the board and who has complied with the Arkansas Seed law will receive a proper certificate of inspection designating the classification of seed. Such a certificate, however, is good for only one crop season.<sup>3023</sup>

The board must also promulgate all rules and regulations necessary to effectuate the purpose of the Arkansas Seeds law.<sup>3024</sup> The board is also authorized to cooperate with other agencies of the State and Federal Government.<sup>3025</sup>

**Mississippi (region 3).**—The agricultural seed law of Mississippi requires that each seed grower must secure an annual permit from the commissioner before selling or offering for sale, distributing, or soliciting orders for sale of seed. The Mississippi Agricultural and Forestry Experiment Station is exempt from the permit requirements for seed distributed for increase.<sup>3026</sup>

Each container of seed sold, offered or exposed for sale, or transported within Mississippi must comply with the labeling requirement, which provides different sets of requirements for agricultural seed, vegetable seed in containers of 8 ounces or more, vegetable seed in containers of less than 8 ounces, flower seed, tree and shrub seed, and treated seed.<sup>3027</sup> Each person whose name or code number appears on the label as handling seed must keep complete records for 2 years of each lot of agricultural or vegetable seed handled, and the file sample of each lot of seed for 1 year after final disposition of the seed.<sup>3028</sup> Moreover, all traders in seed-cotton must keep a register of the names of all persons from whom they buy or procure by barter such cotton, the date of the transaction, the quantity received, and the place where the seed was grown.<sup>3029</sup>

Agricultural seed or mixtures of agricultural seeds, vegetable seed, flower seed, and tree and shrub seed are exempt from these mandatory requirements, when:<sup>3030</sup>

- Seed is sold and delivered by a farmer-grower on the premises. The grower is required to label seed when sold and shipped away from the premises but is not required to hold a seed selling permit. This exemption does not apply to commercial growers of seed.

<sup>3020</sup>Seeds, ARK. CODE ANN. § 2-18-101 through 2-18-108 (1987 & Supp. 1991).

<sup>3021</sup>Id. § 2-18-103 (1987).

<sup>3022</sup>Id. § 2-18-103 (1987).

<sup>3023</sup>Id. § 2-18-106.

<sup>3024</sup>Id. § 2-18-104.

<sup>3025</sup>Id. § 2-18-108.

<sup>3026</sup>Agricultural Seed, MISS. CODE ANN. § 69-3-3 et seq. (1991).

<sup>3027</sup>Id. § 69-3-5.

<sup>3028</sup>Id. § 69-3-7.

<sup>3029</sup>Id. § 69-3-23.

<sup>3030</sup>Id. § 69-3-11.

- Seed is sold or represented to be sold for purposes other than seeding. However, the vendor must make clear to the purchaser that such seed is not for seeding purposes.
- Seed for processing is being transported to, or consigned to, or stored in a processing or cleaning establishment.
- Seed is sold directly to and in the presence of the purchaser and taken from a container labeled in compliance with the Mississippi Seeds law; no other label is required unless requested by the purchaser.
- The person will not be subject to penalties for having sold or offered for sale seed that is incorrectly labeled or represented as to kind, species, variety, or origin if the seed cannot be identified by examination, unless the person has failed to take necessary steps to ensure the seed's identity.

The commissioner of the Mississippi Agriculture and Commerce is designated as the enforcing agency, with the authority to establish rules and regulations that are deemed necessary to carry out the purpose of the Seeds law.<sup>3031</sup> The commissioner is also authorized to—

sample, inspect, make analysis, and test seed to determine compliance;

prescribe and adopt reasonable rules and regulations governing methods of sampling, inspecting, analyzing, testing, and examining seed; and

appoint an arbitration council, receive complaints, conduct investigations and issue findings and recommendations prerequisite to legal action.<sup>3032</sup>

The Arbitration Council, composed of six members and six alternative members, is created to assist consumers and seed growers in determining the validity of complaints made by consumers against seed growers and to recommend cost damages resulting from the alleged failure of seed to produce as represented by the label on the seed package.<sup>3033</sup>

Noncompliance with this act will result in seizure and disposition of violating seed.<sup>3034</sup> Penalties will not be imposed.<sup>3035</sup>

**Wisconsin (region 4).**—The Wisconsin Seed law requires different sets of labeling requirements for agricultural seed, vegetable seed, vegetable seed in containers of 1 pound or less, vegetable seed in containers of more than 1 pound, and treated seed.<sup>3036</sup>

The law provides that alfalfa seed that is sold or distributed in Wisconsin must be certified by a seed-certifying agency.<sup>3037</sup> A person whose name appears on the label (who is called "labeler") must secure a seed labeler's license from the Department of Agriculture before selling, distributing, or offering or exposing such seed for sale.<sup>3038</sup> In addition, it requires each labeler to maintain complete records of each lot

<sup>3031</sup>Agricultural Seed, MISS. CODE ANN. § 69-3-17.

<sup>3032</sup>Id. § 69-3-19.

<sup>3033</sup>Id. § 69-3-19.

<sup>3034</sup>Id. § 69-3-21.

<sup>3035</sup>Id. § 69-3-25.

<sup>3036</sup>Plant Industry, WIS. STAT. ANN. § 94.39 (West 1990).

<sup>3037</sup>Id. § 91.40 (West 1990).

<sup>3038</sup>Id. § 91.43 (West 1990 & Supp. 1993).

of agricultural or vegetable seed for 2 years, and sample of each lot of seed for 1 year after final disposition of the lot.<sup>3039</sup>

The provisions pertaining to the regulated seed does not apply to the following:<sup>3040</sup>

- Seed or grain not intended for sowing or planting purposes.
- Seed in storage in, or being transported, or consigned to a cleaning or processing establishment for cleaning or processing.
- Any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier.
- Moreover, unless grower has failed to ensure the identity of the seed, a person will not be subject to penalties imposed by the Wisconsin seed law for selling and transporting seeds that were incorrectly labeled or represented if such seed cannot be identified by examination.<sup>3041</sup>

Under the Wisconsin seed law, the department is authorized to do the following:<sup>3042</sup>

- Enter onto public or private premises and sample, analyze, test and inspect all seeds and records.
- Establish and maintain a seed laboratory for the testing and analysis of seed.
- Make purity and germination tests of seed upon request.
- Cooperate with the USDA and the agencies in seed law enforcement.
- Publish information concerning the inspection and sales of seed and the results of the analysis of official samples of agricultural and vegetable seed annually.
- Establish rules that—
  - govern methods of sampling, inspecting, analyzing, testing, and examining seed;
  - prescribe tolerances for purity and germination tests and rates of occurrence of noxious weed seed;
  - modify the list of prohibited and restricted noxious weed seed;
  - govern the distribution and labeling of seed;
  - provide standards for relative meaning, certification of seed and the effectiveness of inoculum applied to reinoculated seed;
  - provide reasonable standards of germination for vegetable seed;
  - provide a list of *fine-textured grasses* and *coarse kind*;
  - govern the issuance of seed labeler's license; and
  - administer and enforce the provisions regulating seed.

**Iowa (region 5).**—Under the Agricultural Seed law of Iowa, each package or container of agricultural or vegetable seed that is sold, offered for sale, exposed for sale, or transported within Iowa must comply with the labeling requirement.<sup>3043</sup> The test to

<sup>3039</sup>Plant Industry, WIS. STAT. ANN. § 91.44 (West 1990).

<sup>3040</sup>Id. § 91.42.

<sup>3041</sup>Id. § 91.42.

<sup>3042</sup>Id. § 91.45.

<sup>3043</sup>Agricultural Seed, IOWA CODE ANN. § 199.3 (West 1987 & Supp. 1993).

determine the percentage of germination required by the label requirement must be completed within 9 months before the seed is offered for sale.<sup>3044</sup> If agricultural or vegetable seed is sold from or offered for sale in bulk, the labeling requirement may be fulfilled by a placard conspicuously placed with the several required items or a printed or written statement to be given to any purchaser of the seed.<sup>3045</sup> The container of any inoculant for leguminous plants must bear a required label.<sup>3046</sup>

However, these requirements do not apply to the following:<sup>3047</sup>

- Seed or grain not intended for sowing purposes.
- Seed in storage in, or being transported or consigned to a seed cleaning or processing establishment for cleaning or processing.
- A carrier in respect of seed transported or delivered for transportation in the ordinary course of its business as a carrier.

In addition, a person who sold or offered for sale seed that is incorrectly labeled or represented as to kind, species, variety, or origin is not subject to penalties if the seed cannot be identified by examination, unless the person has failed to take necessary steps to ensure the seed's identity.<sup>3048</sup>

Seed lots of all kinds of agricultural seed intended for sale in Iowa must be tested in compliance with the association of official seed analysts' rules for testing seed or the regulations under the Federal Seed Act (7 U.S.C.A. § 1551 et seq.).<sup>3049</sup>

A person must obtain a permit from the department before selling, distributing, advertising, soliciting orders for, or offering or exposing for sale of agricultural or vegetable seed.

However, the permit requirement does not apply to persons—  
     selling seed that has been packed and distributed by a person holding and having in force a permit; or  
     selling or advertising seed of their own production, provided that the seed is stored or delivered to a purchaser only on or from the farm or premises where grown.<sup>3050</sup>

Permit issuance will be subject to a fee schedule.<sup>3051</sup>

The classes of certified seed are breeder, foundation, registered and certified, that must be recognized by the certifying agency.<sup>3052</sup>

The Iowa Department of Agriculture is authorized to carry out the provisions of this law. To further this goal, the department must do the following:<sup>3053</sup>

- Sample, inspect, analyze, and test agricultural seed (other than lawn seed) to determine compliance.

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<sup>3044</sup>IOWA CODE ANN. § 199.8 (West 1987).

<sup>3045</sup>Id. § 199.4.

<sup>3046</sup>Id. § 199.6.

<sup>3047</sup>Id. § 199.9.

<sup>3048</sup>Agricultural Seed, IOWA CODE ANN. § 199.9.

<sup>3049</sup>Id. § 199.10.

<sup>3050</sup>Id. § 199.15 (West Supp. 1993).

<sup>3051</sup>Id.

<sup>3052</sup>Id. § 199.7 (West 1987).

<sup>3053</sup>Id. § 199.11 (West Supp. 1993).

- Adopt rules governing methods of sampling, inspecting, analyzing, testing, and examining agricultural seed (other than lawn seed).

The department is encouraged to do the following:

- Enter upon public or private premises to have access to commercial seed (other than lawn seed), subject to the Agricultural Seed law and departmental rules.
- Issue and enforce a written or printed "stop sale" order to any owners or custodians of any lot of agricultural seed in violation.
- Establish and maintain or make provision for seed testing facilities.
- Employ qualified persons and incur necessary expenses.
- Cooperate with the U.S. Department of Agriculture in seed law enforcement.

**Nebraska (region 5).**—Under the Nebraska Seed law,<sup>3054</sup> to be enforced and carried out by the director of Department of Agriculture,<sup>3055</sup> the following provisions are applicable to seed activities:

- Each person who sells or transports agricultural or vegetable seed must obtain a valid permit issued by the Department of Agriculture.<sup>3056</sup> However, the permit requirement does not apply to—
  - any person who labels and sells less than 10,000 pounds of agricultural seed each year (except any person who labels and sells grass seed and mixtures of grass seed intended for lawn or turf purposes); or
  - agricultural or vegetable seed being labeled and sold that is not the breeder or foundation seed classes of varieties developed by publicly financed research agencies intended for the purpose of increasing the quantity of seed available.<sup>3057</sup>
- Each container of seed sold or distributed must comply with the labeling requirement. The Nebraska Seed law imposes different labeling requirements for different types of seed.<sup>3058</sup>
- Each person on the label as handling agricultural or vegetable seed must keep records of each lot of agricultural or vegetable seed for 2 years, and sample of each lot of seed for 1 year after final disposition of the lot.<sup>3059</sup>
- Each person, firm, association, or corporation who issues, uses or circulates any certificate, advertisement, tag, seal pertaining to seeds or plant parts intended for propagation of sale, where the words "Nebraska State Certified", "State Certified", "Nebraska-Certified", or similar wording are used, must comply with all rules, regulations and requirements established by the College of Agriculture of the University of Nebraska.<sup>3060</sup>

The Nebraska Seed law prohibits all persons from distributing or selling agricultural or vegetative seed that:<sup>3061</sup>

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<sup>3054</sup>NEB. REV. STAT. § 81-2,147 through 81-2,157 (1987).

<sup>3055</sup>Id. § 81-2,147.06.

<sup>3056</sup>Id. § 81-2,147.10.

<sup>3057</sup>Id. § 81-2,147.10.

<sup>3058</sup>Id. § 81-2,147.02.

<sup>3059</sup>Id. § 81-2,147.04.

<sup>3060</sup>Id. § 81-2,150.

<sup>3061</sup>Id. § 81-2,147.03.

- Has not been tested within 9 months to determine the percentage of germination according to the labeling requirement.
- Does not comply with the labeling requirement or contains false or misleading labeling.
- Pertains to which there has been a false or misleading advertisement.
- Contains prohibited noxious weed seed or restricted noxious weed seed exceeding the prescribed limitations.
- Contains weed seed exceeding 2 percent of the whole by weight (unless provided otherwise by the rules or regulations).
- Has not been registered or certified as required.

The Nebraska law also prohibits the selling of falsely marked hybrid seed corn.<sup>3062</sup>

However, the Nebraska Seed law does not apply to the following:<sup>3063</sup>

- Seed or grain not intended for sowing or planting purposes.
- Seed in storage in, or being transported, or consigned to a cleaning or processing establishment for cleaning or processing.
- Any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier.

Moreover, unless anyone has failed to ensure the identity of the seed, a person will not be subject to penalties imposed by the Nebraska Seed law for selling and transporting seed that was incorrectly labeled or represented if such seed cannot be identified by examination.<sup>3064</sup>

The director of the Nebraska Department of Agriculture can—  
 prescribe and adopt rules and regulations governing the method of sampling, inspecting, analyzing, testing, and examining agricultural and vegetable seed and the tolerances and limitations;  
 sample, inspect, analyze, test and examine agricultural and vegetable seed;  
 prescribe, establish, and modify, by regulation, a prohibited and restricted noxious weed list;  
 prescribe and adopt rules and regulations establishing reasonable standards of germination for vegetable seed.

Moreover, the director is authorized to—  
 enter upon public or private premises to determine compliance;  
 issue and enforce a written stop-sale order;  
 establish and maintain or make provision for seed testing facilities;  
 employ qualified personnel and incur necessary expenses;  
 make purity and germination tests of seed for farmers and dealers on request; and

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<sup>3062</sup>NEB. REV. STAT. § 81-2,155.

<sup>3063</sup>Id. § 81-2,147.05.

<sup>3064</sup>Id. § 81-2,147.05.



cooperate with the USDA and other agencies in seed law enforcement.<sup>3065</sup>

Any lot of agricultural or vegetable seed that is not in compliance with the provisions of the Nebraska Seed law will be subject to suspension from sale, seizure, and condemnation. However, before disposition of noncompliant seed, the court must give the claimant an opportunity to apply to the court for the release of the seed or permission to condition or relabel it to bring it into compliance with such law.<sup>3066</sup> The director may apply to the court of competent jurisdiction a temporary or permanent injunction restraining such violation.<sup>3067</sup> Violation of the Nebraska Seed law constitutes a Class IV misdemeanor.<sup>3068</sup>

Moreover, the Nebraska Seed law also creates a Nebraska Seed Administrative Cash Fund, which is available for investment by the state investment officer, to aid in defraying the cost of administering the Nebraska Seed law.<sup>3069</sup>

**New Mexico (region 6).**—The New Mexico Seed law<sup>3070</sup> specifies a number of prohibitions. It is unlawful for any person to:<sup>3071</sup>

- Sell, offer for sale, expose for sale or transport for sale within New Mexico any agricultural or vegetable seed—
  - unless the test to determine the percentage of germination has been completed within the required 9 months;
  - not labeled as required, or having a false or misleading labeling;
  - pertaining to which there has been a false or misleading advertisement;
  - consisting of or containing prohibited noxious weed seed;
  - consisting of or containing restricted noxious weed seed per pound exceeding the permitted amount;
  - containing more than 2.5 percent by weight of all weed seed; or
  - if any labeling, advertising or other representation subject to this law represents the seed to be certified or registered seed unless it has been so determined by the seed certifying or registering agency.
- Detach, alter, deface or destroy any label.
- Disseminate any false or misleading advertisement concerning agricultural or vegetable seed.
- Fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale".
- Use the word "trace" as substitute for any statement that is required.
- Use the word "type" in any labeling in connection with the name of any agricultural seed variety.

<sup>3065</sup>New Mexico Seed Law, NEW MEXICO STAT. ANN. § 81-2,147.06.

<sup>3066</sup>Id. § 81-2,147.07.

<sup>3067</sup>Id. § 81-2,147.08.

<sup>3068</sup>Id. § 81-2,147.09.

<sup>3069</sup>Id. § 81-2,147.1.

<sup>3070</sup>Id. § 76-10-11 to 76-10-22 (Michie 1978).

<sup>3071</sup>Id. § 76-10-14.

The law provides that each container of agricultural and vegetable seed that is sold, offered for sale, or exposed for sale, or transported within New Mexico must have a plainly written or printed label or tag in the English language.<sup>3072</sup> In addition to the labeling requirements, the law also imposes the seed certification requirement. Such certification must be granted by the certification agency for New Mexico.<sup>3073</sup>

The law requires the person whose name is on the label to keep complete records of each lot of agricultural or vegetable seed handled. Such records must be open for inspection by the board of regents of New Mexico State University or its agents.<sup>3074</sup>

However, the act permits exemptions from the label requirements and the general prohibition provisions. These exemptions are as follows:<sup>3075</sup>

- Seed or grain not intended for sowing purposes.
- Seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing.
- Any carrier in respect to any seed transported or delivered for transportation in the ordinary course of business as a carrier.
- Seed or grain sold by the grower on his or her farm as uncleaned, untested, and unprocessed.

The New Mexico Seed law designates the following duties to the Board of Regents of New Mexico State University:<sup>3076</sup>

- Sample, inspect, make analysis of and test agricultural and vegetable seed transported, sold, or offered or exposed for sale in New Mexico for sowing purposes.
- Prescribe and adopt rules and regulations governing the method of sampling, inspecting, analyzing, testing, and examining agricultural and vegetable seed, and the tolerances to be followed in the administration of the New Mexico Seed law.
- Prescribe and, after a public hearing following due public notice, establish, add to, or subtract therefrom by regulations a prohibited or restricted noxious weed list.
- Prescribe and, after a public hearing following due public notice, adopt rules and regulations establishing reasonable standards of germination for vegetable seed.

In addition to the above duties, the board also has the authority to do the following:<sup>3077</sup>

- Enter upon public or private premises during regular business hours to have access to seed and records in determining compliance with the New Mexico Seed law.

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<sup>3072</sup>New Mexico Seed Law, NEW MEXICO STAT. ANN. § 76-10-13.

<sup>3073</sup>Id. § 76-10-17. The certification agency is consisted of (1) the director (or associate director) of the agricultural extension service; (2) the director (or associate director) of the agricultural experiment station; (3) the extension agronomist; (4) the experiment station agronomist; and (5) the director of the New Mexico Department of Agriculture of the New Mexico State University.

<sup>3074</sup>Id. § 76-10-15.

<sup>3075</sup>Id. § 76-10-16.

<sup>3076</sup>Id. § 76-10-18(A).

<sup>3077</sup>Id. § 76-10-18(B).

- Issue and enforce a *stop sale* order to the owner or custodian of any lot of agricultural or vegetable seed that the board finds is in violation of the law.
- Establish and maintain or make provisions for seed testing facilities, to employ qualified persons and to incur such expenses as may be necessary to comply with the law.
- Make or provide for making purity and germination tests of seed for farmers and dealers on request, to prescribe rules and regulations governing such testing, and to fix and collect charges for the test made.
- Cooperate with the U.S. Department of Agriculture and other agencies in seed law enforcement.

Moreover, the New Mexico Seed law provides that any noncompliance agricultural or vegetable seed is subject to seizure.<sup>3078</sup> The board (or its agents) may also apply to any court for a temporary or permanent injunction restraining any person from violating or continuing to violate any provisions of this law.<sup>3079</sup> The law imposes civil penalties (monetary fines) on any violator of any provisions of this law.<sup>3080</sup>

**Texas (regions 6 & 7).**—Under the Seed and Plant Certification law of Texas, the State Seed and Plant Board, consisting of six appointed members, is designated as the State agency to enforce and implement the Seed and Plant Certification law.<sup>3081</sup>

Certified seed and plants are in four classes: Breeder, Foundation, Registered, and Certified.

A *Breeder* seed or plant is directly controlled by the originating or sponsoring person and is the primary source for the production of seed and plant of other classes.

A *Foundation* seed or plant is the progeny of a breeder or foundation seed or plant, which is produced and handled under the procedures established by a seed or plant certifying agency for foundation class.

A *Registered* seed or plant is the progeny of a breeder or foundation seed or plant and is produced and handled under the procedures established by a seed or plant certifying agency for Registered class.

A *Certified* seed or plant is the progeny of a breeder, foundation or registered seed or plant, which is produced and handled under the procedures established by a seed or plant certifying agency for certified class.<sup>3082</sup>

The Texas seed law provides that a person desiring to produce a certified class of seed or plant for which the board has established standards for genetic purity and identity can apply to the board for licensing as a Foundation, Registered, or

<sup>3078</sup> NEW MEXICO STAT. ANN. § 76-10-19.

<sup>3079</sup>Id. § 76-10-20.

<sup>3080</sup>Id. § 76-10-21.

<sup>3081</sup>TEXAS AGRIC. CODE ANN. § 62.001 et seq. (West 1995). Interestingly, the board may hold an open or closed meeting by telephone conference call if immediate action is required and convening of a quorum at one location is inconvenient. § 62.0021.

<sup>3082</sup>Id. § 62.003.

Certified producer of seed or plants.<sup>3083</sup> Moreover, a person engaging in the development, maintenance, or production of seed or plants, for which standards of genetic purity and identity has been established by the board, may apply to the board for registration as a plant breeder.<sup>3084</sup>

The board is authorized to establish the eligibility of various types and varieties of seed and plants for genetic purity and identity certification and procedures for that certification. It can also establish standards for classes of certified seed and plants.<sup>3085</sup> However, it must adopt rules governing the protection of Foundation, Registered, and Certified cotton varieties.<sup>3086</sup>

A person desiring to register a new variety of cotton must apply for registration.

This requirement does not apply to—

the person who withdraws from the operation of a cotton variety previously registered to that person; and

contracts between a registrant and a seed person for farmers for the production or sale of certified seed of the new cotton variety. It does not prohibit one farmer from selling to another farmer cottonseed of a new variety grown on his or her own farm.<sup>3087</sup>

Under the seed law of Texas, arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed.<sup>3088</sup> The Texas seed law designates the State Seed and Plant Board to be the board of arbitration.<sup>3089</sup> Arbitration procedures are in the following order:<sup>3090</sup>

- The purchaser can begin arbitration by filing with the commissioner a sworn complaint (and a nonrefundable fee), and send a copy of the complaint to the seller.
- Within 15 days of the complaint's receipt, the seller must file with the commissioner an answer to the complaint and send a copy of the answer to the purchaser.
- The commissioner then refers the complaint and answer to the board of arbitration for investigation, findings, and recommendations.
- Upon referral of the complaint and answer, the board must make a prompt and full investigation of the matter complained. The report must include findings of fact, conclusions of law, and recommendations as to costs, if any.
- Once the board has filed the report, the commissioner must promptly transmit the report to all parties.

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<sup>3083</sup>TEXAS AGRIC. CODE ANN. § 62.005.

<sup>3084</sup>Id. § 62.006.

<sup>3085</sup>Id. § 62.004.

<sup>3086</sup>Id. § 62.007.

<sup>3087</sup>Id. § 62.007.

<sup>3088</sup>Id. § 62.001, § 62.002.

<sup>3089</sup>Id. § 62.005.

<sup>3090</sup>Id. § 62.006.

In any litigation involving a complaint that has been arbitrated, any party may introduce the arbitration's report as evidence of the facts found in the report; the court may take into account any findings of the board of arbitration.<sup>3091</sup>

Moreover, the department is authorized to adopt rules necessary to carry out the purposes of the Arbitration of Seed law.<sup>3092</sup>

**Idaho (region 8).**—Under the Pure Seed law of Idaho,<sup>3093</sup> the following provisions are applicable to seeding activities within Idaho:

- Before each container of seed is sold, offered for sale, exposed for sale, or transported for sale, it must comply with the labeling requirement.<sup>3094</sup>
- Each person whose name or code number appears on the label as handling seed must keep complete records for 2 years of each lot of agricultural or vegetable seed handled. Such person must keep a file sample of each lot of seed for 1 year after final disposition of such seed.<sup>3095</sup>

An in-state seed dealer or an out-of-state seed dealer who sells, distributes, processes, or mixes for use of others any seed must obtain a license from the department.<sup>3096</sup> Such dealer will not be granted the permit unless the dealer has an established plant, warehouse, or place of business. The different classes of licenses are:

Class "A" license consists of those in-state dealers who sell seed in packages of 8 ounces and up to and including 5 pounds. The fee for Class "A" license is \$15.

Class "B" license consists of those in-state dealers who sell seed in packages or bulk of more than 5 pounds. Class "B" license fee is \$40.

Class "C" license out-of-state dealers, who will pay the license fee of \$80.<sup>3097</sup>

The law specifically prohibits all persons from selling, offering for sale, exposing for sale, or delivering under a contract any seed:<sup>3098</sup>

- For which the test to determine the percentage of germination as required by the labeling requirement was not completed within the past 15 months.
- Is not labeled according to the labeling requirement, or has false or misleading labeling.
- Falsely or misleadingly advertised.
- Containing prohibited noxious weed seed.
- Containing restricted noxious weed seed singly or collectively in excess of tolerances.
- Labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or is pending.

<sup>3091</sup>TEXAS AGRIC. CODE ANN. § 62.004.

<sup>3092</sup>Id. § 62.007.

<sup>3093</sup>Pure Seed Law, IDAHO CODE § 22-414 through 22-436 (Michie Supp. 1994).

<sup>3094</sup>Id. § 22-415.

<sup>3095</sup>Id. § 22-419.

<sup>3096</sup>Id. § 22-434.

<sup>3097</sup>Id. § 22-434.

<sup>3098</sup>Id. § 22-416.

- Having the crop seed rye present in wheat, oats, or barley.

However, the law exempts the following from the labeling requirement and penalties:<sup>3099</sup>

- Seed or grain not intended for sowing purposes.
- Seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing.

In addition, a person who sold or offered for sale seed that is incorrectly labeled or represented as to kind, species, variety, or origin is also exempt from penalties if the seed cannot be identified by examination, unless the person has failed to take necessary steps to ensure the seed's identity.<sup>3100</sup>

The Idaho Pure Seed law also creates a State Seed Advisory Board, consisting of eight official members and seven ex officio alternates, to advise and counsel the department in the administration of the Pure Seed law.<sup>3101</sup>

Moreover, the Idaho Pure Seed law provides that any noncompliance agricultural or vegetable seed is subject to seizure.<sup>3102</sup> In addition, the Director of the Board may petition the court restraining the conduct of business violating the provisions of this act.<sup>3103</sup>

Interestingly, the law also requires arbitration between buyer and dealer concerning damages.<sup>3104</sup> It also creates a seed arbitration council, consisting of five members and four alternate members, to conduct arbitration. The arbitration process has a number of procedures, including:<sup>3105</sup>

**Commencement period.**—The buyer can invoke arbitration by filing a sworn complaint with the director (including a \$100 nonrefundable fee). The buyer must serve a copy of the complaint upon the seller.

**Seller's answer.**—The seller must file with the director an answer within 20 days of receipt of the buyer's complaint. The seller must serve a copy of the answer upon the buyer.

**Referral to arbitration council.**—The director refers the complaint and answer to the council for investigation, findings and recommendations.

**Investigation.**—The council must make a prompt and full investigation of the matters in the complaint. The council may delegate the investigation, in part or in whole.

**Report.**—The council makes report and must include findings and recommendations as to costs, if any, for settlement of a complaint. The director must promptly transmit the report to all parties.

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<sup>3099</sup>Pure Seed Law, IDAHO CODE § 22-417.

<sup>3100</sup>Id. § 22-417.

<sup>3101</sup>Id. § 22-435.

<sup>3102</sup>Id. § 22-420.

<sup>3103</sup>Id. § 22-421A.

<sup>3104</sup>Id. § 22-436.

<sup>3105</sup>Id.

**Utah (region 8).**—The Utah Seed Act<sup>3106</sup> provides a set of labeling requirements specified for containers of agricultural seed, mixtures of lawn and turf seed, flower seed, tree, and shrub seed.<sup>3107</sup> It prohibits all individuals in Utah from offering or distributing any agricultural, vegetable, flower, or tree and shrub seed for sale or sowing, unless the following requirements are satisfied:<sup>3108</sup>

- For agricultural seed (and mixtures), a test to determine the percentage of germination has been performed within 18 months of the date the seed is offered for sale; for vegetable, flower, or tree and shrub seed, a germination test has been performed within 9 months; and for hermetically sealed agricultural, vegetable, flower, or tree and shrub seed, a germination test has been performed within 36 months.
- The result of germination tests appears on the label.
- The seed is free of noxious weed seed.

If agricultural, vegetable, flower, or tree and shrub seed have been treated with chemicals, the label on any package or other container must indicate accordingly.<sup>3109</sup> The act specifically prohibits individuals from—  
using the word "trace" as a substitute for a statement required under this act;

disseminating any false or misleading advertisement about agricultural, vegetable, flower, or tree and shrub seed; or

detaching, altering, or destroying any label, or substituting any seed in a manner that defeats the purpose of this act.<sup>3110</sup>

In addition, the act requires the Utah Department of Agriculture to periodically enter public or private premises where seed is distributed or exposed for sale to determine whether seed is being distributed in compliance with the act.<sup>3111</sup> In the course of inspection, the department also has the authority to prescribe regulations to control offense seed, such as weed seed and noxious weed seed.<sup>3112</sup>

However, the act does not apply to—

seed or grain not intended for sowing;

seed at, or consigned to a seed processing or cleaning plant (provided that any label made with respect to the uncleaned or unprocessed seed is subject to this act); and

any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier (provided that the carrier is not engaged in producing, processing, or marketing agricultural, vegetable, flower, or tree and shrub seed).<sup>3113</sup>

<sup>3106</sup>UTAH CODE ANN. § 4-16-1 et seq. (amended 1985).

<sup>3107</sup>Id. § 4-16-4.

<sup>3108</sup>Id. § 4-16-5(1).

<sup>3109</sup>Id. § 4-16-5(2).

<sup>3110</sup>Id. § 4-16-5(3).

<sup>3111</sup>Id. § 4-16-7(1).

<sup>3112</sup>Id. § 4-16-7(2).

<sup>3113</sup>Id. § 4-16-6.

In addition to the Utah Seed Act, the State Legislature also enacted the Utah Noxious Weed Act.<sup>3114</sup> Noxious weed is defined as "any plant the Commissioner of Agriculture determines to be injurious to public health, crops, livestock, land, or other property."<sup>3115</sup> Under the Noxious Weed Act, the commissioner has a broad range of functions, powers, and duties. They are as follows:<sup>3116</sup>

- Investigate and designate noxious weeds on a statewide basis.
- Compile and publish a list of statewide noxious weeds annually.
- Coordinate and assist in inter-county noxious weed enforcement activities.
- Determine whether each county complies with the Utah Noxious Weed Act.
- Assist a county that fails to carry out the provisions of this act in its implementation of a weed control program.
- Prescribe the form and general substantive content of notices to the public and to individuals regarding the prevention and control of noxious weeds.
- Compile and publish a list of articles capable of disseminating noxious weed seed and designate treatment to prevent dissemination.
- Regulate the flow of contaminated articles into Utah and between counties to prevent the dissemination of noxious weed seed.

The Utah Noxious Weed Act creates a five-member Noxious Weed Committee,<sup>3117</sup> who will serve for an indeterminate time, or until they are no longer associated with or represent the group or agency.<sup>3118</sup> These five members are elected by the commissioner following approval by the Agricultural Advisory Board. Any member of the committee may be removed by cause and any vacancy will be filled by appointment.<sup>3119</sup> In addition, the committee has the authority to—

- confer and advise on matters relating to planning, implementing, and administering of the State noxious weed program;
- recommend names for membership on the committee; and
- serve as members of the executive committee of the Utah Weed Control Association.<sup>3120</sup>

The act also creates the County Weed Control Board. The board is composed of three to five members appointed by several counties' board of county commissioners, and one member of the county commission appointed by the chairman of the board of county commissioners.<sup>3121</sup> The members are appointed to 4-year terms of office, and two board members must be farmers or ranchers.<sup>3122</sup> Any member may be removed by the commission for cause and any vacancy will be filled by appointment of the commission for the unexpired term of the vacated

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<sup>3114</sup>UTAH CODE ANN. § 4-17-1 et seq. (amended in 1989).

<sup>3115</sup>Id. § 4-17-2(4).

<sup>3116</sup>Id. § 4-17-3.

<sup>3117</sup>UTAH CODE ANN. § 4-17-3.5(1). One member apiece represents the Utah Department of Agriculture, the U.S.U. Agricultural Experiment Station, the U.S.U. Extension Service, the Utah Association of Counties, and the private agricultural industry.

<sup>3118</sup>Id. § 4-17-3.5(3).

<sup>3119</sup>Id. § 4-1-3.5(2).

<sup>3120</sup>Id. § 4-17-3.5(4).

<sup>3121</sup>Id. § 4-17-4.

<sup>3122</sup>Id.



member.<sup>3123</sup> Moreover, the members may serve with or without compensation depending on the determination of the county commission.<sup>3124</sup>

Under the general direction of its commission, the county weed control board is responsible for the formulation and implementation of the countywide coordinated noxious weed control program to prevent and control noxious weeds within its county,<sup>3125</sup> and is required to cooperate with other county weed control boards to prevent and control the spread of noxious weeds.<sup>3126</sup> In addition, the county is allowed to declare a particular weed or competitive plant that is not in the State noxious weed list to be a county noxious weed within its county. It may also petition the commissioner for removal of a particular noxious weed from the state noxious weed list. However, a weed's removal from the list by petition may be possible only after a public hearing conducted by the commissioner after due notice.<sup>3127</sup>

Each county weed control board must post a general notice of the noxious weeds within the county in at least three public places.<sup>3128</sup> Any landowner or land operator who fails to take action to prevent or control the spread of noxious weeds as indicated by the notice is maintaining a public nuisance.<sup>3129</sup> If the property is declared a public nuisance and the property owner or operator fails to control or prevent the spread of noxious weeds within 5 working days, after notification, the county may enter upon the affected property, even without consent of the owner or operator, to perform necessary work to control weeds.<sup>3130</sup> Any expense incurred in controlling noxious weeds is paid by the property owner or operator.<sup>3131</sup>

**Oregon (region 9).**—The Oregon Seed law<sup>3132</sup> sets different mandatory labeling requirements for agricultural seed,<sup>3133</sup> vegetable seed in packages weighing 1 pound or less,<sup>3134</sup> vegetable seed weighing more than 1 pound,<sup>3135</sup> and bins and bulk displays.<sup>3136</sup>

The labeling requirement does not apply to agricultural or vegetable seed, or mixtures of agricultural or vegetable seed when—

sold to be recleaned before being sold for seeding purposes;

held in storage or consigned to a seed handling establishment for conditioning;

held, sold, or exposed for sale for milling, food, or feeding purposes only;

or

transported from field to conditioner and between conditioner and dealer.<sup>3137</sup>

<sup>3123</sup>UTAH CODE ANN. § 4-17-4.

<sup>3124</sup>Id.

<sup>3125</sup>Id. § 4-17-5(1).

<sup>3126</sup>Id. § 4-17-5(2).

<sup>3127</sup>Id. § 4-17-5(3).

<sup>3128</sup>Id. § 4-17-7(1).

<sup>3129</sup>Id. § 4-17-7(3).

<sup>3130</sup>Id. § 4-17-8(1).

<sup>3131</sup>Id. § 4-17-8(2).

<sup>3132</sup>OR. REV. STAT. § 633.511 through 633.992 (1995).

<sup>3133</sup>Id. § 633.520.

<sup>3134</sup>Id. § 633.531.

<sup>3135</sup>Id. § 633.541.

<sup>3136</sup>Id. § 633.545.

<sup>3137</sup>Id. § 633.550(1).

Furthermore, containers of agricultural or vegetable seed, or mixtures of agricultural or vegetable seed, or both, are exempt from the labeling requirement for agricultural seed, vegetable seed weighing 1 pound or less, and vegetable seed weighing more than 1 pound, when such containers are filled in the presence of the purchaser from bins or bulk display containers if such bins or bulk display containers are labeled with the required information.<sup>3138</sup>

Furthermore, the seed law requires each person who sells, offers, or exposes for sale any agricultural or vegetable seed to obtain a license before engaging in such activities.<sup>3139</sup> This requirement does not apply to an individual who sells seed of his or her production or an individual who sells only vegetable seed at retail in packages weighing not more than one-half pound, as prepared for such trade by other seed companies that hold a valid license.<sup>3140</sup>

With the concurrence of the Dean of the College of Agricultural Sciences of Oregon State University, the Director of Agriculture must prepare a list of prohibited noxious weed seed and restricted noxious weed seed,<sup>3141</sup> which can be modified at a later time.<sup>3142</sup>

The director or the deputies or inspectors can do a number of things, including—  
entering on premises where seed is being sold, offered for sale, handled or transported;  
examining and inspecting any seed upon entering of such premises;  
drawing a representative sample of any lot of such seed for official testing and analysis; and  
examining any records or documents pertaining to any seed sold or offered for sale.<sup>3143</sup>

Furthermore, the director can seize any container of seed that appears to be in violation of the seed law and place a quarantine on all agricultural or vegetable seed entering Oregon.<sup>3144</sup>

The director is required to establish standards of germination for vegetable seed and make reasonable rules and regulations necessary to carry out the purpose of the seed law.<sup>3145</sup>

The dean is required to maintain and operate a properly equipped seed testing laboratory, in connection with the agricultural experiment station at Oregon State University, and make all tests. The dean can enter into cooperative arrangements with the USDA for research work in seed testing.<sup>3146</sup> The dean is also required to conduct the certification of varieties of agricultural, cereal grain or vegetable seed,

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<sup>3138</sup>OR. REV. STAT. § 633.550(2).

<sup>3139</sup>Id. § 633.770.

<sup>3140</sup>Id. § 633.700.

<sup>3141</sup>Id. § 633.561.

<sup>3142</sup>Id. § 633.571.

<sup>3143</sup>Id. § 633.670.

<sup>3144</sup>Id. § 633.690.

<sup>3145</sup>Id. § 633.680.

<sup>3146</sup>Id. § 633.580.

tubers, or horticultural plants for planting purposes as certified seed, tubers or plants.<sup>3147</sup>

**California (region 10).**—The California Seed law<sup>3148</sup> enables the "seed industry, with the aid of the state, to ensure that seed purchased by the consumer-buyer is properly identified and of the quality represented on the tag or label."<sup>3149</sup> The law creates a Seed Advisory Board, consisting of seven appointed members,<sup>3150</sup> to advise the director and make recommendations on all matters, including, but not limited to, the overall enforcement program, annual budget, and regulations required to accomplish the purpose of the seed law.<sup>3151</sup>

Under the California Seed law, the following provisions are applicable to the sale and distribution of seed in California:

- Every labeler of agricultural or vegetable seed offered for sale or sold in California must register annually with the director.<sup>3152</sup> However, the registration requirement does not apply to—
  - an individual grower, where seed is exclusively for the producers own planting use,
  - a person using agricultural or vegetable seed only for purposes of planting seed increase, or
  - a person who is licensed to sell nursery stock.<sup>3153</sup>
- An annual registration fee must accompany the license application.<sup>3154</sup>
- Each registrant must also pay an assessment annually to the director in the amount of \$0.40 per \$100 of gross annual dollar volume sales of agricultural or vegetable seed.<sup>3155</sup> However, the assessment fee requirement does not apply—
  - to a labeler or any other person where the agricultural or vegetable seed's assessment, or both, has been previously paid by another labeler or person (except when the identity of the lot has been changed);
  - on the portion of the person's sales of agricultural or vegetable seed, or both, that is sold in containers of 4 ounces or less in net weight of seed; or
  - on agricultural or vegetable seed, or both, sold and shipped out of California.<sup>3156</sup>
- Each container of agricultural seed that is for sale or sold within California for sowing purposes (except when the sale is an occasional sale of seed grain by the producer of seed grain to his or her neighbor) must comply with the labeling requirement.<sup>3157</sup> However, the labeling requirement does not apply to—
  - seed or grain not intended for sowing purposes;

<sup>3147</sup>OR. REV. STAT. § 633.620.

<sup>3148</sup>CAL. FOOD & AGRIC. CODE § 52251 through 52511 (West 1986 & Supp. 1996).

<sup>3149</sup>Id. § 52288 (West Supp. 1996).

<sup>3150</sup>Id. § 52291 (West 1986).

<sup>3151</sup>Id. § 52296.

<sup>3152</sup>Id. § 52351.

<sup>3153</sup>Id. § 52351.

<sup>3154</sup>Id. § 52352.

<sup>3155</sup>Id. § 52354 (West Supp. 1996).

<sup>3156</sup>Id.

<sup>3157</sup>Id. § 52452 (West 1986).

seed in storage in, or being transported or consigned to a cleaning or processing establishment for cleaning or processing;

seed or grain which is transported without transfer of title for sowing on land which is owned by the person by whom the seed or grain was produced;

seed that is weighed and packaged in the presence of the purchaser from a bulk container; and

seed or grain that is transported from one warehouse to another without transfer of title or in storage in a warehouse.<sup>3158</sup>

- All seed (except seed at the time of sale by a retail merchant for nonfarm use) must bear upon the label adequate notice of the requirement to follow the conciliation or mediation procedures governing disputes between labelers and any person.<sup>3159</sup>

According to the seed law, the director and each commissioner must sample and inspect any agricultural or vegetable seed to determine compliance with the California Seed law.<sup>3160</sup> To carry out this law, any officer who is required to enforce the provisions of this law can enter upon public or private premises to have access to any seed subject to this law.<sup>3161</sup>

The California Seed law requires the secretary, by regulation, to establish a list of seed-certifying agencies that the secretary finds qualified to certify the variety, purity, quality, type, strain, or other genetic character of agricultural or vegetable seed.<sup>3162</sup>

The California Seed law provides that all moneys received by the director must be deposited in the Department of Agriculture Fund.<sup>3163</sup> This fund will finance the department's cost of carrying out this law.<sup>3164</sup> Moreover, the director is required to pay annually, 30 percent of the total assessment fees or \$65,000, whichever is greater, to counties as a subvention for costs incurred in the enforcement of the seed law.<sup>3165</sup> However, the annual subvention to the counties cannot exceed \$120,000.<sup>3166</sup> The subvention program is optional; thus, the counties can choose to participate.<sup>3167</sup> The subvention to counties, however, must be apportioned as follows:

- Counties with no registered seed labelers must receive \$100.
- Counties with registered seed labeler operations must receive subventions based upon unit of enforcement activity generated by the registered seed labeler operations within the county.

The commissioners of the counties that choose to participate in the subvention program must enter into a cooperative agreement with the director to be effective

<sup>3158</sup>CAL. FOOD & AGRIC. CODE. § 52451.

<sup>3159</sup>Id. § 52456 (West Supp. 1996).

<sup>3160</sup>Id. § 52361 (West 1986).

<sup>3161</sup>Id. § 52362 (West 1986).

<sup>3162</sup>Id. § 52401 (West Supp. 1996).

<sup>3163</sup>Id. § 52321.

<sup>3164</sup>Id. § 52323.

<sup>3165</sup>Id. § 52323.

<sup>3166</sup>Id. This subvention funding provision terminates on July 1, 1999.

<sup>3167</sup>Id. § 52324.

for 5 years, whereby the commissioner agrees to maintain a statewide compliance level on all seed within the county.<sup>3168</sup>

The director is required to do the following:<sup>3169</sup>

- Adopt germination standards for vegetable seed.
- Adopt tolerances to be applied in all enforcement procedures required by the California Seed law.
- Prescribe methods of procedure in the examination of lots of any agricultural or vegetable seed, and in securing samples of such lots.
- Establish a reasonable schedule of fees for tests, examination and services.
- Adopt such other regulations as will assist in carrying out the purposes of the California Seed law.

**Tennessee (regions 11 & 12).**—The Tennessee Seed law<sup>3170</sup> was enacted for "regulat[ing] the labeling, possessing, offering, exposing, transporting, or distributing for sale of agricultural [and] vegetable seed and screening," to prevent misrepresentation.<sup>3171</sup> Under this law, the following provisions are applicable to the selling and transportation of seed within Tennessee:

- Each seed person who sells or distributes any agricultural or vegetable seed to farmers, retailers, wholesalers, or others who use or plant seed must obtain an annual license from the commissioner. The license application must be accompanied by a license and inspection fee and a surety bond.<sup>3172</sup>
- Each container of treated seed, agricultural seed, vegetable seed in containers of one pound or less, or vegetable seed in containers of more than 1 pound must comply with different sets of labeling requirements.<sup>3173</sup> However, the labeling requirement does not apply to—
  - seed or grain not intended for sowing purposes;
  - seed in storage in, or being transported or consigned to a cleaning or processing establishment for cleaning or processing;
  - any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; and
  - seed grown, sold, and delivered by the producer on one's premises to the purchaser for seeding purposes.<sup>3174</sup>
- Moreover, unless the seed seller has failed to ensure the identity of the seed, a person will not be subject to penalties imposed by the Tennessee regulation of sale and transportation of seed law for having sold or offered for sale seed that was incorrectly labeled or represented if such seed cannot be identified by examination.<sup>3175</sup>
- Each person whose name appears on the label as handling agricultural or vegetable seed must keep complete records for 2 years of each lot handled, and

<sup>3168</sup>TENN. CODE ANN. § 52325.

<sup>3169</sup>Id. § 52331 (West Supp. 1996).

<sup>3170</sup>Id. § 43-10-101 et seq. (1987 & Supp. 1993).

<sup>3171</sup>Id. § 43-10-102.

<sup>3172</sup>Id. § 43-10-118 (1987).

<sup>3173</sup>Id. § 43-10-104 through 43-10-108.

<sup>3174</sup>Id. § 43-10-110.

<sup>3175</sup>Id. § 43-10-110.

keep a file sample of each lot of seed for 1 year after final disposition of the lot.<sup>3176</sup>

- Seed intended for growth, harvest, sale or distribution (except nursery crops, greenhouse crops, vegetable crops, strawberries, and sweet potatoes) must be certified by the state seed certifying agency.<sup>3177</sup>

The Tennessee Seed law prohibits all persons from distributing or selling agricultural or vegetative seed that:<sup>3178</sup>

- Has not been licensed.
- Has not been tested within 9 months to determine the percentage of germination according to the labeling requirement.
- Does not comply with the labeling requirement or contains false or misleading labeling.
- Pertains to a false or misleading advertisement.
- Contains prohibited noxious weed seed or restricted noxious weed seeds exceeding the prescribed limitations.
- Contains restricted noxious weed seed, except as provided by the regulations promulgated by the commissioner.
- Contains weed seed exceeding two percent of the whole by weight (unless provided otherwise by the board's rules or regulations).
- Has not been treated nor labeled accordingly.
- Does not comply with rules and regulations of an official seed certifying agency.
- Has not been certified by an official seed certifying agency when the seed is of a variety for which a certificate of plant variety is required under the Plant Variety Protection Act.

The disclaimers, nonwarranties, and limited warranties provided pertaining to any seed will not directly or indirectly modify any information required by the Tennessee Seed law or rules and regulations promulgated pursuant to this law.<sup>3179</sup>

Noncompliant lots of seed will be subject to seizure on complaint of the commissioner to a court of competent jurisdiction. If the court finds the seed to be in violation of the Tennessee Seed law and orders condemnation of the seed, such seed must be denatured, processed, destroyed, relabeled, or otherwise disposed of.<sup>3180</sup> However, before disposition of noncompliant seeds, the court must give the claimant an opportunity to apply to the court for the release of the seed or permission to condition or relabel it to bring it into compliance with such law.<sup>3181</sup> The commission can apply to the court of competent jurisdiction for a temporary or permanent injunction restraining such violation.<sup>3182</sup>

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<sup>3176</sup>TENN. CODE ANN. § 43-10-111.

<sup>3177</sup>Id. § 43-10-201 through 43-10-205.

<sup>3178</sup>Id. § 43-10-109 (Supp. 1993).

<sup>3179</sup>Id. § 43-10-112 (1987).

<sup>3180</sup>Id. § 43-10-115.

<sup>3181</sup>Id.

<sup>3182</sup>Id. § 43-10-117.