

## INTRODUCTION

North Dakota agricultural producers depend on pesticides - herbicides, fungicides, insecticides and rodenticides - to protect their investment in crops and livestock from disease, insects and other pests. Pesticides, however, can pose significant risks to human and animal health and to the environment. Federal and state governments have passed laws and promulgated rules to ensure that producers have access to necessary farm chemicals, while safeguarding public health and the environment.

This book contains North Dakota's Pesticide Laws, as passed by the State Legislature, together with pertinent rules and regulations developed by the North Dakota Department of Agriculture and other state agencies.

This book is for reference only. For purposes of legal citation, please refer to appropriate sections of the North Dakota Century Code and the North Dakota Administrative Code.

We hope you find this book helpful. If you have any questions, please contact either of the following:

North Dakota Department of Agriculture Plant Services  
600 B. Boulevard Ave., Dept. 602  
Bismarck, North Dakota 58505-0020  
(701) 328-2231  
FAX: (701) 328-4567  
jmolson@state.nd.us  
www.agdepartment.com

North Dakota State University Extension Service  
Pesticide Training and Certification Programs  
166 Loftsgard Hall  
North Dakota State University  
P.O. Box 5051  
Fargo, ND 58105-505 1  
(701) 231-7180  
FAX: (701) 231-8474  
pesticid@ndsuext.nodak.edu  
www.ag.ndsu.nodak.edu/aginfo/pesticid/pesticid.htm

## PESTICIDE ACT INDEX

Section	Page
4-35-01	Title
4-35-02	Creation of pesticide control board
4-35-03	Enforcing agency
4-35-04	Declaration of purpose
4-35-05	Definitions
4-35-06	Pesticide control board to administer chapter and adopt regulations
4-35-06.01	Limitation on authority of political subdivisions regarding pesticides
4-35-06.02	Commissioner of agriculture - Pesticide control board Recovery of funds
4-35-06.03	Minor use pesticide fund - Continuing appropriation
4-35-07	Experimental use permits
4-35-08	Classification of certificates
4-35-09	Commercial applicator's certification
4-35-09.1	Proof of financial responsibility
4-35-10	Expiration of certification - Renewal
4-35-11	Non resident application -Designation of agent for service of process
4-35-12	Pesticide dealer certification
4-35-12.1	"Stop sale" orders
4-35-13	Application of act to governmental entities
4-35-14	Private applicators
4-35-15	Unlawful acts - Ground for denial, suspension, or revocation of a certification
4-35-16	Commercial applicators to keep records — Duration Submission to commissioner
4-35-17	License plates forequipment
4-35-18	Reciprocal agreement
4-35-19	Exemptions
4-35-20	Discarding and storing of pesticides, pesticide containers and pesticide rinsate
4-35-21	Reports of pesticide accidents, or loss
4-35-21.1	Reports of loss through pesticide application required
4-35-21.2	Contents of verified reports of damage
4-35-22	Subpoenas
4-35-23	Penalties
4-35-24	Enforcement
4-35-25	Information
4-35-26	Delegation of duties
4-35-27	Cooperation
4-35-28	Disposition of funds
4-35-29	Prior liability
4-35-30	Crop protection harmonization and registration board

## CHAPTER 4-24

### MISCELLANEOUS

**4-24-06. Sale of chemically treated grain - Misdemeanor.** No person may sell grain, for the purpose of human or animal consumption, which has been chemically treated for insect or fungus control, without informing the purchaser of the fact of such treatment. Any person selling such chemically treated grain without informing the purchaser thereof is guilty of a class B misdemeanor.

## CHAPTER 4-35

### PESTICIDE ACT

**4-35-01. Title.** This chapter must be known as the "North Dakota Pesticide Act of 1975".

**4-35-02. Creation of pesticide control board.** There is hereby created the pesticide control board, hereinafter also called the "board", consisting of the commissioner of agriculture, the director of the cooperative extension division of the North Dakota state university of agriculture and applied science, and the director of the agricultural experiment station at North Dakota state university of agriculture and applied science. The commissioner of agriculture must be chairman of the board and is responsible for the enforcement of this chapter. The board shall meet at the call of the chair. The members of the board must be compensated for their expenses in performing their duties under this chapter at the same rate as other state officials and the board's expenses must be paid from funds provided for the administration of this chapter to the commissioner of agriculture. The board may act through the office of the commissioner of agriculture, and one person on the commissioner's staff may be specifically responsible to, or act as the state-level agent of, the board.

**4-35-03. Enforcing agency.** This chapter must be administered by the pesticide control board, hereinafter referred to as the "board".

**4-35-04. Declaration of purpose.** The legislative assembly hereby finds that pesticides are valuable to our state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. The purpose of this chapter is to regulate, in the public interest, the distribution, storage, transportation, disposal, and use and application of pesticides to control pests as hereinafter defined. New pesticides are continually being discovered or synthesized which are valuable for the control of pests, and for use as defoliant, desiccants, plant regulators, and for related purposes. The dissemination of accurate scientific information as to the proper use or nonuse of any pesticide is vital to the public health and welfare and the environment, both immediate and future. Therefore, it is deemed necessary to provide for regulation of their use and application.

**4-35-05. Definitions.** As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
3. "Applicator" means any person who applies a pesticide to land.
4. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
5. "Certified applicator" means any individual who is certified under this chapter. The term includes a commercial applicator and a private applicator.
6. "Commercial applicator" means a certified applicator who uses any pesticide, for any purpose or on any property, other than as provided for by a private applicator.
7. "Dealer" means any person who sells a pesticide to an end user.
8. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
10. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
11. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
12. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.
13. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
14. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta,

comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.

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

17. "Labeling" means the label and all other written, printed, or graphic matter:

a. Accompanying the pesticide or device; and

b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

18. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

19. "Mixture" means a diluted pesticide combination.

20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eel worms.

21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.

22. "Pest" means:

a. Any insect, snail, slug, rodent, nematode, fungus, or weed; or

b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.

23. "Pesticide" means:

a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

24. "Pesticide dealer" means any person who distributes restricted use pesticides.

25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

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

27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.

28. "Public operator" means a certified applicator who applies restricted use pesticides as an employee of a state agency, municipal corporation, public utility, or other governmental agency.

29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.

30. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.

31. "Snail" or "slug" includes every harmful mollusk.

32. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.

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

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

35. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

#### **4-35-06. Pesticide control board to administer chapter and adopt regulations.**

1 a. The pesticide control board shall administer this chapter and may adopt rules in accordance with chapter 28-3 2 to implement this chapter. The rules may prescribe methods to be used in the application of pesticides. The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:

- (1) Plants, including forage plants, on adjacent or nearby lands.

- (2) Wildlife in the adjoining or nearby areas.
- (3) Fish and other aquatic life in waters in proximity to the area to be treated.
- (4) Persons, animals, or beneficial insects.

b. In adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.

2. For the purpose of uniformity, the board may adopt restricted use classifications as determined by the federal environmental protection agency. The board may also by rule determine state restricted use pesticides for the state or designated areas within the state.

3. The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of pesticides. These standards and requirements must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.

4. Rules adopted under this chapter may not permit any pesticide use which is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act or regulations or orders issued thereunder.

5. In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, the board may make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.

6. Rules to implement this chapter may provide for:

- a. The collection, examination, and reporting of samples of pesticides.
- b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
- c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

**4-35-06.1. Limitation on authority of political subdivisions regarding pesticides.** No political subdivision, including a home rule city or county, may adopt or continue in effect any ordinance, resolution, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

**4-35-06.2. Crop protection product harmonization and registration board -Recovery of funds.** The crop protection product harmonization and registration board may accept funds received for expenses paid relating to the registration of pesticides or donations offered to or for the benefit of the board. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The board shall attempt, whenever possible, to recover funds

expended relating to the registration of pesticides and shall adopt rules to administer this section.

**4-35-06.3. Minor use pesticide fund - Continuing appropriation.** The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

**4-35-07. Experimental use permits.** Provided the state is authorized by the administrator of the environmental protection agency to issue experimental use permits, the board may:

1. Issue an experimental use permit to any person applying for such permit if it determines that the applicant needs it in order to accumulate information necessary to register a pesticide. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.
2. Prescribe terms, conditions, and period of time, for the experimental use permit which is under its supervision.
3. Revoke any experimental use permit, at any time if it finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

**4-35-08. Classification of certificates.** The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if the person desires to be certified in one or more of the classifications provided for by the board under this section.

**4-35-09. Commercial applicator's certification.**

1. A commercial applicator may not purchase or use a pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied, alter

examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified.

4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial applicators for the use of pesticides.

#### **4-35-09.1. Proof of financial responsibility - Exceptions.**

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator shall furnish proof of financial responsibility on demand to the agriculture commissioner as provided in this section. Minimum financial responsibility must be maintained in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner shall immediately suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder shall demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.

2. This section does not apply to:

- a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
- b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
- c. A person required to be certified in the right-of-way category.
- d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

**4-35-10. Expiration of certification - Renewal.** A certificate issued under section 4-35-09 expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the

board, or both, if required by the board. The board shall require a person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to classifications for which the applicant has applied makes a new examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to use pesticides safely and properly.

**4-35-11. Nonresident application - Designation of agent for service of process.** Any nonresident applying for certification as an applicator or dealer under this chapter to operate in this state shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and the power of attorney must be so prepared and in such form as to render effective the jurisdiction of the courts of this state over the nonresident applicant; provided, however, that any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as such agent. The secretary of state is allowed such fees therefore as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the secretary of state or of a resident agent. The copy will be duly certified by the secretary of state.

**4-35-12. Pesticide dealer certification.**

1 .It is unlawful for any person to distribute or sell restricted use pesticides or assume to act as a restricted use pesticide dealer, at anytime, without first having obtained certification from the North Dakota state university extension service, or the service's designee in the county in which the applicant operates his principal place of business. A certified person is required at each location or outlet located within this state from which restricted use pesticides are distributed. Any manufacturer, registrant, or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.

2. Application for a certificate must be accompanied by an examination fee set by the board and must be on a form prescribed by the board. The board shall adopt rules governing service of process on members of corporations, limited liability companies, partnerships, or associations, and governing the listing of membership in such organizations. The application must also state the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.

3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements within each classification for which certification is sought as prescribed by the board.

4. Each restricted use pesticide dealer is responsible for the acts of each person employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's certification is subject to denial,

suspension, or revocation, after a hearing, for any violation of this chapter, whether committed by the dealer, or by the dealer's officer, agent, or employee.

5. A certificate issued under this section expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board may require any person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to pesticides makes an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to distribute pesticides safely and properly.

**4-35-12.1. "Stop-sale" orders.** Whenever any pesticide or device is found by the commissioner and there is reason to believe on the basis of inspection or tests that the pesticide or device is in violation of any of the provisions of this chapter, or when the registration of the pesticide has been canceled by the state or United States environmental protection agency or has been suspended, the commissioner may issue a written or printed "stop-sale, use, or removal" order to any person who owns, controls, or has custody of the pesticide or device, and after receipt of the order, no person may sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

**4-35-13. Application of act to governmental entities.** All governmental agencies and public utilities are subject to this chapter and rules adopted to implement this chapter.

**4-35-14. Private applicators.**

1. No person who would be a private applicator, if certified, may buy, use, or supervise the use of any pesticide classified for restricted use unless such person first complies with the certification requirements as determined by the board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.

2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use must be determined by the board. In determining these standards, the board shall take into consideration similar standards of the environmental protection agency.

3. The board shall determine by rule methods to evaluate the competence of private applicators and provisions for reevaluation as advances in technology warrant, or as necessary to assure a continuing level of competence and ability to use pesticides safely and properly. The North Dakota state university extension service, or its designee, in the county of the residence of the applicant shall issue a certificate to any private applicator who has qualified as prescribed by the board. However, the North Dakota state university extension service, or its designee, may require any applicant required to be certified under this chapter to pay a reasonable charge, not greater than the cost to the North Dakota state university extension service, for materials provided to the applicant for training and education.

**4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a certification.** The commissioner, after providing an opportunity for a hearing, may deny, suspend, revoke, or modify any provision of any certification issued under this chapter, if the commissioner finds that

the applicant or the holder of the certification has committed any act listed in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, by the holder of the certification, or by any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by that person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.
6. Neglected, or, after notice, refused to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Operated unlicensed equipment in violation of section 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.
12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated a federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase the restricted use pesticide unless the person or agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted.
17. Applied any economic poison that is not registered pursuant to chapter 19-18.

**4-35-16. Commercial applicators to keep records - Duration - Submission to commissioner.** The board shall require the holders of certificates to maintain records of sales

of restricted use and special exemption pesticides and all commercial applications of pesticides. The board may also require restricted use pesticide application records of private applicators. Such relevant information as the board may deem necessary may be specified by rule. The records must be kept for a period of three years from the date of the application or sale of the restricted use pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

**4-35-17. License plates for equipment.** The board may require all motor vehicles, as defined in chapter 39-01, which are used for the application of restricted use pesticides to be identified by a license plate or decal furnished by the board. Such license plate or decal must be issued at no cost to the certified applicator, and must be affixed to the vehicle as prescribed by the board. This section must not be interpreted to apply to aircraft engaged in aerial spraying which are licensed under section 2-05-18.

**4-35-18. Reciprocal agreement.** The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted use pesticides under a plan substantially similar to this chapter. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

**4-35-19. Exemptions.**

1. The certification requirements of this chapter do not apply to a competent person applying general use pesticides under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is deemed to be applied under the direct supervision of a commercial applicator if the pesticide is applied by a competent person acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified. The certification requirements of this chapter do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide label requires that a certified applicator personally apply the particular pesticide. A pesticide is deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instruction and control of a private applicator who is available and when needed, even though the private applicator is not physically present at the time and place that the pesticide is applied.

2. The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides or to a doctor of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as medication during the course of normal practice.

**4-35-20. Discarding and storing of pesticides, pesticide containers, and pesticide rinsate.** No person may discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or pesticide rinsate in such a manner as to endanger the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall promulgate regulations governing the discarding, storage, display, or disposal of any pesticide, pesticide rinsate, pesticide containers, or devices.

#### **4-35-21. Reports of pesticide accidents or loss.**

1. The board shall, by regulation, require the reporting to the commissioner of agriculture of pesticide accidents.
2. Any person claiming damages from a pesticide application inflicting damage on property, except where the claimant was the operator or applicator of the pesticide, shall report the loss in accordance with this chapter. Where damage is alleged to have occurred and the claimant has filed a report of loss in accordance with this chapter, the claimant shall permit the commissioner, the applicator, and the applicator's representatives to observe, during reasonable hours, the lands or property alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands automatically bars the claim against the applicator. The number of applicator's representatives who may make an observation under this subsection may be limited by the board.
3. An applicator shall inform any person employing him to apply to land any pesticide of the reporting requirements of this chapter.

#### **4-35-21.1. Reports of loss through pesticide application required.**

1. No civil action may be commenced arising out of the application of any pesticide by any applicator inflicting damage on property unless, within sixty days from the date the claimant knew or reasonably should have known of the damage:
  - a. The claimant has served the applicator allegedly responsible for damage with a verified report of loss;
  - b. If the claimant is someone other than the person employing the applicator alleged to be responsible for the damage, the claimant has served the person who employed the applicator allegedly responsible for the damage with a verified report of loss; and
  - c. The claimant has mailed or delivered to the commissioner of agriculture a verified report of loss together with proof of service of the report required by subdivision a and the report required by subdivision b, if applicable.
2. Notwithstanding the provisions of subsection 1, if damage is alleged to have occurred to growing crops, the report must be filed prior to the time fifty percent of the field is harvested or within sixty days from the date the claimant knew or reasonably should have known, whichever occurs first.
3. The applicator must provide anyone who alleges damage with information of this section for filing a verified report and that timely filing of a report is a prerequisite to any civil action. Failure to provide such information, in addition to the penalties of this chapter, may be grounds for revocation of the applicator's certification and, in addition, the sixty-day limitation of this section does not apply.
4. No verified report of loss is required when the claimant was the operator or applicator of the herbicide, insecticide, fungicide, or agricultural chemical.

**4-35-21.2. Contents of verified reports of damage.** Any verified report of the loss arising out of the application of any pesticide by any applicator required by this chapter, must include, so far as known to the claimant: the name and address of the claimant, the type, kind, and location of property allegedly injured or damaged, the date the alleged injury or damage occurred, the name of applicator allegedly responsible for the loss or damage, and if the claimant is not the same person for whom the work was done, the name of the owner or occupant of the property for whom the applicator was rendering labor or services.

**4-35-22. Subpoenas.** The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications and sales in the state in any hearing affecting the authority or privilege granted by a certification issued under the provisions of this chapter.

**4-35-23. Penalties.**

1. Any registrant; applicator, other than a private applicator; wholesale dealer; retailer; or other distributor who knowingly violates any provision of this chapter shall be guilty of a class A misdemeanor.

2. Any private applicator or other person not included in subsection 1 who knowingly violates any provision of this chapter shall be guilty of a class B misdemeanor.

3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

4. In addition to the criminal sanctions which may be imposed pursuant to subsections 1 and 2, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner of agriculture through an administrative hearing pursuant to chapter 2 8-32.

**4-35-24. Enforcement.**

1. The commissioner is charged with the duty of enforcing the requirements of this chapter and any rules or regulations issued hereunder.

2. The commissioner may bring an action to enjoin the violation or threatened violation of any provision of this chapter, or any rule or regulation made pursuant to this chapter, in the district court of the county in which such violation occurs or is about to occur.

3. In the event any person violates any provision of this chapter, the commissioner may issue an order requiring such person to cease and desist from the unlawful activity. In the event the violator fails to obey, the commissioner will cause the appropriate criminal complaint to be filed.

4. For the purpose of carrying out the provisions of this chapter, the commissioner may enter upon any public or private premises at reasonable times, in order to:

- a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which such equipment is stored or used.
- b. Inspect or sample lands actually or reported to be exposed to pesticides.
- c. Inspect storage or disposal areas.
- d. Inspect or investigate complaints of injury to humans or land.
- e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes without compensation to the applicator for values less than three dollars. If the value of the sample is over three dollars, the applicator has the option of being given a receipt to be paid at a later date, or of not being reimbursed.
- f. Observe the use and application of a pesticide.
- g. Have access for the purpose of inspecting any premises or other place where pesticides or devices are held for distribution, sale, or for use or for the purpose of inspecting and obtaining samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for such pesticides.

5. The commissioner shall, at any reasonable time, have access to the records pertaining to pesticide application and sales of any person. He may copy or make copies of such records for the purpose of carrying out the provisions of this chapter. Unless required for the enforcement of this chapter, such information is confidential.

6. When access is refused or in situations where the commissioner feels critical enforcement documentation may be lost, the commissioner or the commissioner's designated agent for the purposes set forth in this chapter, may apply to any court of competent jurisdiction for a search warrant authorizing access to such land or records for said purposes. The court may, upon such application and upon compliance with the provisions of chapter 29-29.1, issue the search warrant for the purposes requested.

7. If a civil penalty pursuant to section 4-35-23 is imposed by the commissioner of agriculture through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. Additionally, the commissioner may suspend or revoke a certification issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

**4-35-25. Information.** The board may, in cooperation with private, local, state, or federal agencies, publish information and conduct short courses of instruction in the areas of knowledge required by this chapter.

**4-35-26. Delegation of duties.** All authority vested in the commissioner by virtue of the provisions of this chapter may, with like force and effect, be executed by such employees or agents as the commissioner may, from time to time, designate for that purpose.

**4-35-27. Cooperation.** The board may cooperate, receive grants-in-aid, and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, in order to:

1. Secure uniformity of regulations.
2. Enter into cooperative agreements with and submit plans to the environmental protection agency for approval to issue experimental use permits under the authority of this chapter and the Federal Insecticide, Fungicide, and Rodenticide Act.
3. Cooperate in the enforcement of the federal pesticide control laws and state laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs.
4. Enter into contracts with other agencies, including federal agencies, for the purpose of training pesticide applicators, managers, dealers, and pesticide consultants.
5. Gain assistance in implementation of this chapter.
6. Regulate certified applicators.
7. Comply with other purposes prescribed by regulation of the commissioner.

**4-35-28. Disposition of funds.** All moneys received by the board under the provisions of this chapter must be deposited to the credit of the certification and training fund under the control of the board.

**4-35-29. Prior liability.** The enactment of this chapter does not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which is already in existence on July 1, 1975.

**4-35-30. Crop protection product harmonization and registration board - Duties - Grants**

1. The crop protection product harmonization and registration board consists of:
  - a. The governor or the governor's designee;
  - b. The agriculture commissioner or the commissioner's designee;
  - c. The chairman of the house agriculture committee or the chairman's designee;
  - d. The chairman of the senate agriculture committee or the chairman's designee;
  - e. A member of the house or senate agriculture committee who is not a member of the faction in which the committee chairman is a member, appointed by the legislative council chairman;
  - f. A crop protection product dealer in the state appointed by the governor from a list of three nominees submitted by the North Dakota agricultural association;

- g. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota grain growers association;
  - h. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota oilseed council;
  - i. A representative of the crop protection product manufacturing industry appointed by the chairman of the legislative council; and
  - j. The director of the North Dakota state university agricultural experiment station.
2. The representative of the crop protection product manufacturing industry and the director of the agricultural experiment station shall serve as nonvoting members. The governor or the governor's designee shall serve as chairman of the board.
3. The board shall:
- a. Identify and prioritize crop protection product labeling needs;
  - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
  - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
  - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
  - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
  - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
  - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
4. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
5. The board may administer a grant program through which agriculture commodity groups may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.

6. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

7. The board may adopt rules to implement this section.

## CHAPTER 4-35.1

### CHEMIGATION REGULATION

4-35.1-01. Definitions. As used in this chapter:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an irrigation system.
2. "Commissioner" means the agriculture commissioner.
3. "Fertilizer" means any fertilizer as defined by section 19-20.1-02.
4. "Pesticide" means that term defined in section 4-35-05.
5. "State engineer" means the state engineer appointed by the state water commission under section 61-03-01.

**4-35.1-02. Statement of compliance.** For the purposes of this chapter, farm irrigation systems used for chemigation which are designed, constructed, and operated as specified in the administrative rules adopted under this chapter so as to minimize the possibility of ground or surface water contamination, are considered to be in compliance with this chapter.

**4-35.1-03. Rules - Standards for application through irrigation system, installation, maintenance, and modifications.** The commissioner of agriculture shall adopt rules regulating chemigation through irrigation systems in this state to minimize the possibility of chemical, pesticide, fertilizer, or other contamination of irrigation water supply and other rules as necessary to implement this chapter. The commissioner may establish by rule standards for application of pesticides and fertilizers through irrigation systems; for installation and

maintenance of all equipment and devices used for chemigation purposes; for modifications or changes in design, technology, irrigation practices; or for other purposes relating to the use or placement of equipment or devices. The commissioner may adopt rules requiring periodic calibration and inspection of equipment and system operation during periods of chemigation.

**4-35.1-04. Inspections.** The state engineer shall cooperate with the commissioner in the inspection of any irrigation system using chemigation. The state engineer shall inform the commissioner of any violation of this chapter that is discovered in the course of the state engineer's regular inspections of irrigation systems using chemigation.

**4-35.1-05. Enforcement.**

1. The commissioner shall enforce this chapter and any rules adopted under this chapter.
2. The commissioner may seek an injunction in the district court in the county in which the violation occurs or may issue a cease and desist order to any person for any alleged violation of this chapter or any rules adopted under this chapter.
3. For the purpose of carrying out the provisions of this chapter, the commissioner and the state engineer may enter upon any public or private premises at reasonable times in order to:
  - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
  - b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
  - c. Inspect storage or disposal areas.
  - d. Inspect or investigate complaints of injury to humans or animals.
  - e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
  - f. Observe the use and application of a pesticide or fertilizer through chemigation.
  - g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or for use.

**4-35.1-06. Penalties.**

1. Any person who violates the provisions of this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing the provisions of this chapter or any rules adopted under this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

3. Any person found to have violated the provisions of this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-3 2.

## **ARTICLE 60-01**

### **GENERAL ADMINISTRATION**

#### **60-01-01-01 Organization and purpose of pesticide control board.**

1. History. The 1975 legislative assembly created the pesticide control board by legislation codified as North Dakota Century Code chapter 4-35. The purpose of the legislation is to regulate, in the public interest, the distribution, storage, transportation, disposal, and use and application of pesticides to control pests.
2. Board membership. The pesticide control board consists of the commissioner of agriculture, who is chairman of the board; the director of the North Dakota state university extension service; and the director of the agricultural experiment station at North Dakota state university of agriculture and applied science.
3. Enforcement responsibility. The commissioner of agriculture is responsible for the enforcement of North Dakota Century Code chapter 4-3 5.
4. Inquiries. General inquiries regarding the pesticide control board may be addressed to:

Agriculture Commissioner, Chairman  
Pesticide Control Board  
North Dakota Department of Agriculture  
600 E. Boulevard Ave., Dept. 602  
Bismarck, North Dakota 5 8505-0020  
(701) 328-2231; e-mail [ndda@state.nd.us](mailto:ndda@state.nd.us)

History: Amended effective Jan. 1, 1992.  
General Authority: NDCC 28-32-02.1  
Law Implemented: NDCC 28-32-02.1

## **ARTICLE 60-03**

### **PESTICIDES**

#### **Chapter**

- |          |                                       |
|----------|---------------------------------------|
| 60-03-01 | Pesticide Sale, Distribution, and Use |
| 60-03-02 | Minor Use Pesticide Fund              |

CHAPTER 60-03-01  
PESTICIDE SALE, DISTRIBUTION, AND USE

60-03-01-01	Scope
60-03-01-02	Definitions
60-03-01-03	Restricted Use Pesticides
60-03-01-04	Prohibited Pesticides [Reserved]
60-03-01-05	Categories of Certification
60-03-01-05.1	Commercial Applicator and Dealer
60-03-01-05.2	Private Applicator Certification
60-03-01-06	Pesticide Mixing, Loading, and Application, - Storage, - Transportation, - Disposal
60-03-01-07	Recordkeeping, Dealers and Commercial and Custom Applicators and Private Applicators
60-03-01-08	Unlawful acts. Repealed effective December 18,2001
60-03-01-09	Reports of Pesticide Accidents
60-03-01-10	Registration, Packaging, Repackaging, Storage, and Transportation of Bulk Pesticides for Each Business Location
60-03-01-11	Storage and transportation of bulk pesticides
60-03-01-12	Repackaging requirements for liquid or dry bulk pesticides
60-03-01-13	Prohibitions

**60-03-01-01 Scope.** This chapter is promulgated pursuant to North Dakota Century Code chapter 4-35 and shall apply to any sale, distribution, or use of pesticides within this state. This chapter shall be applied in conjunction with North Dakota Century Code chapter 4-35.

History: Amended effective Dec. 18, 2001

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-35-06

**60-03-01-02 Definitions.** As used in this chapter, the following words shall have the meaning given to them below, unless otherwise made inappropriate by use and context. Words not defined in this section shall have the meaning given to them in North Dakota Century Code chapter 4-35.

1. "Act" means the North Dakota Pesticide Act.
2. "Board" means the pesticide control board created pursuant to North Dakota Century Code section 4-35-02.
3. "Broadcast" means any intentional application of a pesticide over an area, such as a lawn, field, room, crawl space, or other such surface.
4. "Bulk pesticide" means any volume of pesticide that is intended to be repackaged, can be accurately metered~ and can be transported or held in an individual container
5. "Bulk pesticide facility" means any area, location, tract of land, building, structure, or premises used for the handling or storage of bulk pesticides.

6. "Certification" means certification of dealers, commercial applicators, and private applicators provided for by North Dakota Century Code sections 4-35-09, 4-35-12 and 4-35-14.
7. "Commissioner" means the North Dakota agriculture commissioner.
8. "Compensation" means monetary payment for a specific service.
9. "Custom blend" means any diluted mixture of pesticide prepared by a dealer to the specifications of the end user and not held in inventory.
10. "End use labeling" means the written, printed, or graphic matter on, or attached to or accompanying the pesticide or device or any of its containers or wrappers.
11. "End user" means the person who applies the pesticide.
12. "FIFRA" means federal insecticide, fungicide, and rodenticide act of 1947.
13. "General use pesticide" means any pesticide formulation, which is not classified, for restricted use by the board.
14. "Handling" means the mixing, loading, application, repackaging, storage, transportation, distribution, sale, purchase, or disposal of pesticides.
15. "Mixture" means any diluted combination of pesticide with fertilizer, seed, or other medium.
16. "Mobile container" means a container used to transport pesticides.
17. "Operational area" means a permanent containment area where pesticides are transferred, loaded, unloaded, mixed, repackaged, refilled, or where pesticides are cleaned, or rinsed from containers, or application, handling, storage, or transportation equipment.
18. "Permanent containment area" means:
  - a. An above ground pad or dike constructed of impervious material, such as sealed concrete, stainless steel, or other material as approved by the ND Department of Agriculture;
  - b. Bermed, curbed, sloped, or otherwise designed to contain spills, leaks, releases, or other discharges that are generated during the handling of pesticides or pesticide-containing materials;
  - c. Does not have a drain which exits the containment area;
  - d. All seams and cracks must be sealed to prevent leakage.
19. "Pesticide-containing material" means:
  - a. Any container of a pesticide product that has not been triple rinsed or the equivalent of triple rinsed;

- b. Any rinsate that is derived from a pesticide container, pesticide application equipment, or equipment washing;
  - c. Any material that is used to collect or contain excess or spilled pesticide or rinsate;
  - d. Any mixture of pesticide and diluent such as wash water, rinse water, or rainwater; or
  - e. Material that is generated as a result of contact with or utilization of a pesticide in an application, containment, recovery, reuse, or treatment system. The term does not include personal protective equipment that contains pesticide residue.
20. "Pesticide-producing establishment" means any site where a pesticide is manufactured, packaged, repackaged, prepared, processed, labeled, relabeled, or held for distribution.
21. "Repackaging" means the transfer of a pesticide in an unaltered state from a container into a designated or dedicated refillable container.
22. "Rinsate" means a dilute mixture of pesticide obtained by rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
23. "Spill kit" means a portable kit or other equipment that is designed to recover, minimize, contain, or absorb spills, leaks, releases, or other discharges of pesticides.
24. "Use of a pesticide" means the loading, mixing, applying, storing, transporting, distribution, and disposing of a pesticide.
25. "Use of a pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner that is not permitted by the label, except that the term does not apply to any of the following:
- a. Applying a pesticide at any dosage, concentration, or frequency that is less than that specified on the labeling, unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.
  - b. Applying a pesticide against any target pest that is not specified on the labeling if the application is to the crop, animal, or site that is specified on the label.
  - c. Employing any method of application that is not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling.
  - d. Mixing a pesticide or pesticides with a fertilizer when the labeling does not prohibit such mixture.
  - e. Any use of a pesticide that is in compliance with sections 5, 18, or 24 of the federal insecticide, fungicide, and rodenticide act of 1947 [Pub. L. 104-170; stat. 7 USC 136 et seq.].

History: Amended effective April 15, 1985; Oct. 1, 1990; July 1, 1992; Dec. 18, 2001  
General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

**60-03-01-03 Restricted use pesticides.** The North Dakota restricted use pesticides shall be the same as those declared to be restricted use pesticides by the United States environmental protection agency and others declared at the discretion of the pesticide control board.

History: Effective Aug. 1, 1978; amended effective Feb. 1, 1982 Oct. 1, 1990; July 1, 1992.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

**60-03-01-04 Prohibited pesticides. [Reserved]**

**60-03-01-05 Categories of certification.** Applicators may apply for certification in one or more of the following categories:

1. Agricultural pest control (plant and animal). This category authorizes the application or sale of intended for agricultural crops lands grasslands and noncrop lands. This also includes the use of pesticides on animals, animal facilities.
2. Seed treatment. This category authorizes the application or sale of pesticides on agricultural crop seeds, other seeds, and vegetative seed stocks.
3. Fumigation. This category includes controlling pests in stored and transported agricultural crops, grain milling equipment, and storage facilities.
4. Ornamental and turf pest control. This category includes pesticides to control pests in the production and maintenance of ornamental trees, shrubs, flowers, and turf.
5. Greenhouse. This category includes pesticides to control pests in a greenhouse.
6. Right of way. This category includes pesticides to control pests in the maintenance of public roads, electric powerlines, pipelines, railways, right of ways, parking lots, or other similar areas.
7. Public health pest control. This category includes state, federal, or other government employees, or applicators working under government contract, using pesticides in public health programs for the management and control of pests having medical and public health impacts.
8. Research and demonstration pest control. This category includes individuals who demonstrate or apply pesticides for education and research. These would include county agents, extension specialists, state, federal, and commercial employees, plus other persons conducting research or demonstrating the proper application of restricted use pesticides.
9. Home, industrial, and institutional pest control. This category includes commercial applicators using pesticides in, on, or around food handling establishments, human dwellings, public or private institutions, warehouses, grain elevators, and any other structures or adjacent area, for the control of pests.
10. Wood preservatives. This category includes commercial applicators that apply and treat with wood preservatives to preserve and protect wood, posts, and various lumber products from pests.

11. Vertebrate. This category includes commercial applicators that use pesticides for the control of certain pest vertebrate, such as rodents, certain predators, and bats.

12. Metam-sodium. This category includes commercial applicators that use or sell the restricted use pesticide metam-sodium (sodium N-methyldithiocarbamate dihydrate) for the purpose of controlling tree or other plant roots infesting sewer systems.

History: Amended effective Feb. 1, 1982; Oct. 1, 1990; Nov. 1, 1991; March 1, 1996; Dec. 18, 2001.

General Authority: NDCC 4-35-06.

Law Implemented: NDCC 4-3-09, 4-35-12, 4-35-14.

### **60-03-01-05.1 Commercial Applicator and Dealer.**

1. A commercial applicator or dealer, or commercial applicator and dealer certificate shall be issued in accordance with North Dakota Century Code section 4-35-09 or 4-35-12 or sections 4-35-09 and 4-35-12 respectively, only to those persons who successfully complete the certification examination established by the board, and who pay the certification fee.

2. The board shall establish a certification examination which shall be administered by any North Dakota state university extension designate in accordance with North Dakota Century Code section 4-35-09 or 4-35-12. The examination shall be given by the North Dakota state university extension designate only to those persons who:

- a. Are eighteen years of age or older; and
- b. Complete a certificate application in such form as the board shall require.

3. Commercial applicators or dealer or commercial applicator and dealer certificates shall expire on April first following the third anniversary of the year of certification or recertification. Every commercially certified person shall be recertified by an approved seminar or an approved examination at least every third year.

4. Any person who fails an examination may retake such examination after three or more days.

5. All commercial applicators must be certified in the proper category of application.

6. All dealers must be certified in the proper category of the labels.

7. In situations where the pesticide is labeled for more than one of the certification target sites, the dealer only needs to be certified in one of the categories.

History: Amended effective Feb. 1, 1982; Oct. 1, 1990; Nov. 1, 1991; March 1, 1996; Dec. 18, 2001.

General Authority: NDCC 4-35-06.

Law Implemented: NDCC 4-3-09, 4-35-1 2, 4-35-14.

### **60-03-01-05.2 Private Applicator Certification.**

1. A private applicator certification shall be issued in accordance with North Dakota Century Code section 4-35-14 only to those persons who:

- a. Are eighteen years of age or older; and
- b. Demonstrate competence in the application of pesticides:

2. Competence to apply restricted use pesticides shall be demonstrated by a showing of any one of the following to the North Dakota state university extension designate in the applicant's area:

- a. Attendance at an approved educational seminar, signing of a certificate of attendance, and passing an examination.
- b. Completion of a course of self-instruction and passing an examination at the North Dakota state university extension designate's office in the applicant's area.
- c. Completion of a take-home self-study program and passing an examination.
- d. Passing the dealer or commercial applicator certification examination and submitting the passing grade to the appropriate North Dakota state university extension designate.

3. Persons purchasing, storing, or applying restricted use grain fumigants must be commercially trained and must pass a fumigation exam. At the option of the applicant upon successfully passing the exam, the certificate issued will be for either private or commercial application of restricted use fumigants. The fee for the private and commercial certification will be set by the North Dakota state university extension service.

4. Every private applicator shall be recertified by an approved seminar or an approved examination at least every third year.

5. Any person who fails an examination may retake such examination after three or more days.

History: Amended effective Feb. 1, 1982; Oct. 1, 1990; Nov. 1, 1991; March 1, 1996; Dec. 18, 2001.

General Authority: NDCC 4-35-06, 4-35-12

Law Implemented: NDCC 4-35-08, 4-35-14

### **60-03-01-06 Pesticide Mixing, Loading, and Application - Storage - Transportation - Disposal.**

1. Mixing, loading, and application.

- a. All pesticides shall be used in accordance with the labeling.
- b. Pesticide applications shall be made in a manner that prevents off-target discharges of pesticides.

- c. Pesticide application or loading equipment that is designed to draw water from surface water shall have a properly functioning anti-siphoning device attached to the inlet hose.
- d. Applications shall not occur when the atmospheric conditions favor the off-target drift of pesticides or prevent the proper deposition of pesticides to the target area.
- e. Pesticides shall be applied in a manner that minimizes the exposure to animals. Unless permitted by the labeling, an applicator shall take all reasonable precautions that will prevent a pesticide from being applied if unprotected persons are present within the application site or are present in adjacent areas when off-target drift may occur.
- f. Pesticide applicators and persons assisting with an application shall follow all safety precautions as specified on the container label.
- g. All equipment used in pesticide mixing, loading, and application must be operationally sound and properly calibrated to prevent adverse effects on the environment.
- h. Any commercial applicator who mixes, loads, or otherwise uses pesticides shall have immediate access to a spill kit at the loading site containing not less than two (2) buckets, absorptive pillows, or another system for containing leaking nozzles or a pesticide spill. The spill kit requirement does not apply to a person who uses single containers of pre-mixed, ready —to-use pesticides.
- i. All pesticides that require posting on the label under the environmental protection agency worker protection standard must be posted according to the environmental protection agency worker protection standard. In addition, the pesticides from the following list must be posted by the farm operator or the farm operator's cooperating designee which may include commercial applicators.
  - (1) Methyl parathion.
  - (2) Ethyl parathion.
  - (3) Dyfonate post emergence foliar applications.
  - (4) Furadan post emergence foliar applications to corn sorghum, and sunflowers.
  - (5) Di-syston post emergence foliar application to corn and sorghum.

Any pesticide applicator applying pesticides from this list for a farm operator is required to inform the farm operator within twenty-four hours in advance of the pesticide application, allowing the farm operator time to post the field before the application occurs. The farm operator is primarily responsible for posting the field. However, if the applicator does not contact the farm operator before the application, the applicator is responsible for posting the field. Pesticide applicators are responsible to inform farm operators if applications do not occur as scheduled.

There are two options for properly posting fields.

Option 1: The signs must be a minimum of eight inches by eleven inches [20.32 centimeters by 27.94 centimeters] with one inch (1 .270 centimeter) lettering and be easily readable. The signs must be posted at all normal entrances to the field and on all corners which are along normally traveled roads. These signs can be a maximum of one-half mile [.80 kilometer] apart. The signs must contain the following information: Danger - field sprayed with (pesticide name). The field is safe for reentry on (date).

Option 2: Flags used by aerial applicators when marking field areas that have been sprayed can be used for posting. Such flags must be at least four inches by eight feet [10.16 centimeters by 2.438 meters]. The lettering on the flags must be fluorescent with a white background and must be easily readable. The signs must be dropped outside the field boundaries within fifty feet (15.24 meters) of all normal entrances to the field and all corners along normally traveled roads. These signs can be a maximum of one-fourth mile (.402 kilometer) apart along normally traveled roads. The signs must contain the following language: DANGER - KEEP OUT - THIS FIELD SPRAYED WITH A PESTICIDE. BEFORE ENTRY, CONTACT (business name and phone number).

The business name and phone number can be printed on the flag or, if the flag gives directions to refer to the attached cardboard, the business name and phone number can be printed on the cardboard.

Along with the lettering a skull and crossbones must be printed on the flag in a larger size than the largest lettering. The lettering for "Danger - Keep Out" must be at least three-fourths of an inch [1.905 centimeters]. The lettering for the remaining wording must be at least three-eighths of an inch (.953 centimeter).

## 2. Storage.

- a. All pesticides, except bulk pesticides, shall be stored in their original container and in accordance with label recommendations. All labels of stored pesticides shall be plainly visible. All pesticide containers must have a proper label affixed to them.
- b. All pesticides shall be stored in dry, well-ventilated spaces, and in a manner that will not endanger humans, animals, or the environment, nor contaminate food or feed through a release or escape.
- c. All storage area contains a floor drain, it must be sealed or self-contained.
- d. Pesticide storage areas must be marked at all entrances.
- e. Label specific safety equipment for all pesticides stored must be available at the immediate storage site.
- f. Pesticides shall be secured in a manner to prevent children, unauthorized persons or animals from gaining entry to the stored pesticides.

## 3. Transportation.

- a. All pesticides, except bulk pesticides, shall be transported in their original containers. All pesticides must be transported in a secure manner to avoid breakage of containers, spills, or any other manner of contamination.
- b. Pesticides shall not be transported with foodstuffs, feed, or any other product or material so as to pose a hazard to humans, animals, or the environment.
- c. Equipment contaminated in the transportation of pesticides shall be cleaned and decontaminated prior to any other use.

#### 4. Disposal.

- a. Empty pesticide containers shall be stored in accordance with label recommendations and in a manner which will not endanger humans, animals, or the environment.
- b. Empty nonreturnable pesticide containers shall be triple-rinsed or equivalent on the day of their use. Secondary use of such containers which would endanger humans, animals, or the environment is prohibited.
- c. Pesticide containers shall be disposed of in accordance with label directions and in a manner which will not endanger humans, animals, or the environment.

History: Amended effective April 15, 1985; Oct. 1, 1990; July 1, 1992; May 1, 1994; March 1, 1996; Dec. 18, 2001.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06, 4-35-20.

#### **60-03-01-07 Recordkeeping - Dealers and commercial and custom applicators and private applicators.**

Dealers. Every pesticide dealer shall keep separate, accurate, and complete records of all purchases and sales of restricted use pesticides and all pesticides used under Section 18 (Emergency Exemption) and Section 24-c (Special Local Needs) of FIFRA. The records shall include the following for each pesticide purchased or sold:

##### a. Purchases.

- (1) Dealer's name and address.
- (2) Pesticide name.
- (3) Quantity of Pesticide.
- (4) Date pesticide was shipped or received.
- (5) Distributor's name (person from whom the pesticide was received).

##### b. Sales.

- (1) Dealer's name and address and identification of person making the sale.
- (2) Name, address, certification number, and signature of private or commercial applicator.
- (3) Date of sale.
- (4) Trade name or common name and quantity of pesticide sold.
- (5) Running inventory by product.
- (6) Intended site or crop of application for all pesticides used under Section 18 of FIFRA.

2. Commercial applicators. Commercial applicators shall keep a record of all pesticide applications. A copy of the records must be provided to the client or the applicator must have on file a signed letter giving the applicator permission to keep the records for the client. The record shall include for each application:

- a. Name and address of the person for whom the pesticide was applied.
- b. Legal description of the land, grain bin identification, railcar number, or other description of where the pesticide was applied.
- c. Pest or pests controlled.
- d. Starting and completion time the pesticide was applied (month, day, year, hour of the day).
- e. Person who supplied the pesticide that was applied.
- f. Specific trade name of the pesticide applied and environmental protection agency registration number of the restricted use pesticide that was applied.
- g. Direction and estimated velocity of the wind and the estimated temperature of the outdoor air at the time the pesticide was applied. This requirement shall not apply if a bait is used to attract the pest or pests or if the application is made indoors.
- h. Amount of pesticide used, including:
  - (1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.
  - (2) Percentage or pounds [kilograms] of active ingredient.
  - (3) Pounds [kilograms] or gallons [liters] of tank mix applied per acre [.40 hectare].
- i. Specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure, to which the pesticide was applied.

- j. Description of equipment used in application.
- k. Certification number of applicator, if any, and signature.
- l. Right-of-way applicators must record weather conditions and geographic location in two-hour increments.
- m. The registrant name that appears on the product label.

3. Private applicators. Private applicators shall keep a record of all restricted use pesticide applications. The records must include for each application:

- a. Legal description of the land, grain bin identification (for fumigant or grain protectant applications), or other description of where the pesticide was applied.
- b. Time the pesticide was applied (month, day, year, hour).
- c. Specific trade name of the pesticide applied and environmental protection agency registration number of the restricted use pesticide that was applied.
- d. Amount of pesticide used, including:
  - (1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.
  - (2) Total amount of chemical applied.
- e. Specific crops, commodities, and total acreage (hectarage) or other common identifying unit of measure, to which the pesticide was applied.
- f. Certification number of applicator, if any, and signature.

Records made pursuant to this section shall be completed and made available for inspection on the day the pesticide is applied.

History: Amended effective Oct. 1, 1990; May 1, 1994; March 1, 1996; Dec. 18, 2001.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06, 4-35-16

**60-03-01-08. Unlawful acts.** Repealed effective December 18, 2001

**60-03-01-09. Reports of pesticide accidents.** Any person who is involved in or causes a pesticide accident that results in adverse effects on animals or the environment shall file a report to the commissioner. The report must be made within twenty-four hours after the accident. The report may be filed by letter, telephone, or electronic mail at the address or number identified in subsection 4 of section 60-01-01-01. The report must contain:

- 1. The name of the pesticide.
- 2. The amount of pesticide or tank mix, or both.

3. The location of the pesticide accident.
4. The time of accident (month, day, year, hour of the day).
5. The direction and estimated velocity of the wind and estimated temperature at the time of the accident, if outdoors.
6. Actions taken to remedy the adverse effects on humans animals, and the environment.

History: Effective Feb. 1, 1982; amended effective March 1, 1996; Dec. 18, 2001.

General Authority: NDCC 4-35-21.

Law Implemented: NDCC 4-35-21.

#### **60-03-01-10. Labeling and relabeling of bulk pesticides.**

1. Any person that produces a mixture of any quantity of pesticide, to be applied by another person, and holds the mixture in inventory, must have an environmental protection agency establishment number. The person making the mixture must supply the person applying the mixture with end-use labeling for each pesticide in the mixture. The end-use labeling must have the facilities establishment number printed on it.
2. The environmental protection agency establishment number and end-use labeling must be attached to bulk pesticide storage tanks.
3. The environmental protection agency establishment number, end-use labeling, and quantity of pesticide repackaged must accompany or be attached to the mobile bulk pesticide container.
4. Any person that custom blends any quantity of pesticide to be applied by another person must ensure that end-use labeling for all pesticides in the blend accompanies the blend to the point of end use. No establishment number is required for the blending facilities.

History: Effective April 15, 1985; amended effective Oct. 1, 1990; July 1, 1992; May 1, 1994; Jan. 1, 1997, Dec. 18, 2001.

General Authority: NDCC 4-35-06.

Law Implemented: NDCC 4-35-06, 4-35-1 5.

#### **60-03-01-11. Storage and transportation of bulk pesticides.**

1. The transportation and storage of all bulk pesticides must be in compliance with the manufacturer's requirements.
2. The transportation of bulk pesticides must meet all applicable standards of state and United States department of transportation rules and regulations.
3. A bulk pesticide storage containers must be made of materials and so constructed to be compatible with the pesticide stored and the conditions of storage, including any specifications that may appear on the pesticide labels and labeling.

4. A bulk storage container and loading areas must be constructed and located on a site in a manner so that pesticides will not contaminate streams and water supplies.
5. A permanent bulk storage containers must be equipped with a locking withdrawal valve or must be stored in a secure locked area. The valves or storage area must be locked during non-business hours or while unattended.
6. A bulk pesticide storage containers that are going to be refilled with a different pesticide must be cleaned and rinsed according to both the repackager's and manufacturer's agreed upon written instructions and all former labeling must be removed.
7. An outdoor permanent containment area must be constructed of sufficient size and material so as to contain any spilled or discharged materials. Minimum shall be one hundred twenty-five percent (125%) of the single largest bulk pesticide storage container, or recover and contain a volume of a four-inch rainfall, whichever is greater.
8. An indoor permanent containment area located within an enclosed structure must be constructed of sufficient size and material to contain any spilled or discharged materials, and approved by the pesticide registrant. Minimum containment capacity shall be one-hundred ten percent (110%) of the single largest bulk pesticide storage container.

History: Effective April 15, 1985; amended effective Oct. 1, 1990; July 1, 1992; May 1, 1994; Jan. 1, 1997; Dec. 18, 2001.

General Authority: NDCC 4-35-06.

Law Implemented: NDCC 4-35-06, 4-35-1 5.

#### **60-03-01-12. Packaging and repackaging requirements for liquid or dry bulk pesticides.**

1. A person must obtain a repackaging agreement from the registrant prior to repackaging liquid or dry bulk pesticides.
2. Must be performed at a facility with an EPA Establishment Number.
3. Must use meters and/or scales compatible with the pesticide being repackaged.
4. Must be done in a permanent containment area with a primary shutoff valve or switch within immediate reach of the person who is engaged in the repackaging operation.
5. An operational area must be kept clean of clutter and not used as a storage area for items not immediately used for repackaging.
6. A spill kit must be located within 50 feet of an operational area.
7. Clean up of any spilled pesticide-containing materials must be performed immediately after the occurrence and reported according to local, state, and federal guidelines.
8. A pesticide or pesticide-containing material must be contained either by the permanent containment area itself or drained, pumped, or transferred to an additional impermeable, above ground holding tank or reservoir until utilized or disposed of in compliance with applicable local,

state, and federal laws. The holding tank or reservoir must be suitably constructed to prevent the release of pesticides or pesticide-containing materials to the environment.

History: Effective April 15, 1985; amended effective Oct. 1, 1990; July 1, 1992; May 1, 1994; Jan. 1, 1997; Dec. 18, 2001.

General Authority: NDCC 4-35-06.

Law Implemented: NDCC 4-35-06, 4-35-15, 4-35-20.

### **60-03-01-13. Prohibitions. No Person May:**

1. Package or repackage into a container unless the container is capable of holding, in undivided quantities, the capacity as specified by the environmental protection agency.
2. Place bulk pesticide storage containers underground.
3. Repackage into improperly labeled containers is prohibited.
4. Repackage into containers not designated as reusable by the registrant and container manufacturer is prohibited.

History: Effective April 15, 1985; amended effective Oct. 1, 1990; July 1, 1992; May 1, 1994; Jan. 1, 1997; Dec. 18, 2001.

General Authority: NDCC 4-35-06.

Law Implemented: NDCC 4-35-06, 4-35-15, 4-35-20.

## **PESTICIDE REFERENCE SOURCES**

### **Applicator certification**

North Dakota law requires that anyone using restricted use pesticides (i.e. herbicides, fungicides, insecticides, etc.) must be certified. For information on commercial certification, contact the North Dakota State University Extension Pesticide Programs Office (PPO) at (701) 231-7180. Questions on private certification can be directed to the PPO or to a local NDSU county agent.

### **Container storage and disposal**

Properly disposing is the responsibility of everyone. The North Dakota State Health Department has requirements for proper storage and disposal of triple-rinsed metal and plastic pesticide containers. The department also maintains a list of outdated pesticides. For more information, contact the Waste Management Division at (701) 328-5166.

Questions on when and if burning triple rinsed pesticide containers is allowed should be directed to the Environmental Engineering Division of the State Health Department at (701) 328-5188.

### **Pesticide laws**

Questions on pesticide laws should be directed to the North Dakota Department of Agriculture Plant Industries Program Area at (701) 328-2231.

