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CHAPTER 38-21 AGRICULTURAL PESTICIDE APPLICATION

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CROSS-REFERENCES

Application of pesticides, Chapter 38-21.

Poisons, labeling required, Chapter 34-20.

Use of fertilizers and pesticides, formation of state management plans regarding protection of waters and prevention of pollution, § 34A-2-1 09.

§ 38-20A-1. Definition of terms.

Terms used in this chapter, unless the context otherwise plainly requires, mean:

(1) "Active ingredient," any ingredient which prevents, destroys, repeals or mitigates insects, fungi, rodents, weeds or other pests;

- (2) "Antidote," the most practical immediate treatment in case of poisoning, including first-aid treatment;
- (3) "Bulk pesticide," any volume of a pesticide which is transported or held in an immediate reusable container in undivided quantities greater than one hundred pounds net dry weight or fifty-five U.S. gallons liquid measure. This does not include pesticides which are in the custody of the ultimate user and are fully prepared for use by him;
- (4) "Device," any instrument or contrivance intended for trapping, destroying, repelling or mitigating insects or for destroying, repelling or mitigating fungi, weeds, rodents or such other pests as designated by the secretary, but not including equipment used for the application of pesticides when sold separately and not including rodent traps;
- (5) "Fungi," all nonchlorophyll-bearing thallophytes of a lower order than mosses and liverworts. for example, rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals;
- (6) "Fungicide," any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi;
- (7) "Herbicide," any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;
- (8) "Inert ingredient," an ingredient which is not an active ingredient;
- (9) "Ingredient statement," a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients, in a pesticide. However, in the case of every pesticide containing arsenic in any form, the ingredient statement shall show, in addition to other required information, the percentages of total arsenic and of water-soluble arsenic, each expressed in terms of elemental arsenic;
- (10) "Insect," any of the numerous small invertebrate animals generally having the body more or less obviously segmented, belonging to the class insecta, comprising six-legged usually winged forms. for example, beetles, bugs, bees and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes and wood lice;
- (11) "Insecticide," any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment;
- (12) "Label," the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container and the outside container or wrapper of the retail package:
- (13) "Labeling," all labels and other written, printed, or graphic matter:
- (a) On the pesticide or device or any of its containers or wrappers;
 - (b) Accompanying the pesticide or device at any time; or

(c) To which reference is made on the label or in literature accompanying the pesticide or device, except accurate, nonmisleading reference to current official publications of any government institution or official agency of the United States or of this or any other state, authorized by law to conduct research in the field of pesticides;

(14) "Pest," any insect, rodent, nematode, fungus, weed or other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man or other living animals, which the secretary declares to be a pest;

(15) "Pesticide," any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests, or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant;

(16) "Registrant." the person registering any pesticide pursuant to the provisions of this chapter;

(17) "Rodenticide." any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal which the secretary declares to be a pest;

(18) "Secretary," the secretary of agriculture;

(19) "Waste pesticide," any pesticide formulation that cannot be used according to label directions because of cancellation or suspension of its federal registration or deterioration of the product or its label, and any pesticide formulation whose active ingredients are not clearly identifiable because the pesticide is not stored in its original container; and

(20) "Weed," any plant which grows where not wanted.

Source: SL 1943, ch. 88, § 1; 1947, ch. 99, § 2; 1955, ch. 69; SDC Supp 1960, § 22.12A02; SDCL, § 39-19-1; SL 1983, ch. 281, § 1; 1986, ch. 332, § 2; 1992, ch. 282, § 3.

Cross-References.

Application of statutory definitions, § 2-14-4.

Collateral References.

3 CJS, Agriculture, §§ 95-104.

Applicators, products liability - fertilizers, insecticides, pesticides, fungicides, weed killers, and the like, or articles used in application thereof, 12 ALR 4th 462.

Exterminator's tort liability for personal injury or death directly resulting from operations, 29 ALR 4th 987.

Law Reviews.

Durham v. Ciba-Geigy Corp.: Unconscionable Warranty Disclaimers and Remedy Limitations, 28 SD LRev 186 (1982).

Warranty Disclaimers, Limitations of Liability, and Evidence of Defectiveness in Cases Involving Agricultural Products: Has the South Dakota Supreme Court Gone Too Far?, 31 SD LRev 627 (1986).

§ 38-20A-2. Delegation of powers by secretary of agriculture.

All authority vested in the secretary of agriculture by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture as the secretary may from time to time designate for said purpose.

Source: SL 1947, ch 99, § 11; SDC Supp 1960, § 22.12A10; SDCL, § 39-19-2.

§ 38-20A-3. Declaration as pest of injurious plant, animal or virus.

The secretary of agriculture is authorized, after opportunity for a hearing, to declare as a pest any form of plant or animal life or virus which is injurious to plants, human beings, domestic animals, articles, or substances.

Source: SL 1947, ch 99, § 6; SDC Supp 1960, § 22.12A06 (1) (a); SDCL, § 39-19-3; SL 1985, ch 15, § 51.

§ 38-20A-4. Biennial application for registration required before sale or distribution of pesticide - Contents of application.

On or before July 1, 1998, and every two years thereafter, and before any person whose name or brand name appears on a pesticide may distribute, sell, or offer for sale or distribution in this state any pesticide, the person shall file with the secretary of agriculture an application for the registration of the pesticide. Each application shall include, but is not limited to, the following:

- (1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant;
- (2) The name of the pesticide;
- (3) One complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including directions for use;
- (4) If requested by the secretary, efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment;
- (5) The classification or lack of classification and general use or restricted use of the pesticide; and
- (6) A biennial application fee of one hundred seventy-five dollars.

Each registration is valid for a two-year period and expires on the alternate June thirtieth. The registration may not be transferred. A fee equal to fifty percent of the application fee shall be applied to any late renewal.

If a pesticide has not been manufactured or distributed for two years, or is no longer available for use due to a cancellation or suspension order of the United States Environmental Protection Agency, it is not subject to registration requirements.

Source: SL 1947, ch 99, § 5; SDC Supp 1960, § 22.12A05 (1); SDCL. § 39-19-4: SL 1983, ch 281, § 2; 1998, ch 247, § 1.

Amendments.

The 1998 amendment, in the introductory paragraph, substituted “July 1, 1998, and every two years thereafter” for “the first day of July of each year”; in subdivision (3), substituted “One complete copy” for “Two complete copies”; rewrote subdivision (4), which read, “If requested by the secretary, a full description of the tests made and the results upon which the claims are based; and”; inserted subdivision (6); inserted the next-to-last paragraph; in the last paragraph, inserted “or is no longer available for use due to a cancellation or suspension order of the United States Environmental Protection Agency” and made minor changes in phraseology and punctuation.

Cross-References.

License required to sell certain poisons, §§ 34-20-8 to 34-20-11.

§ 38-20A-5. Exemption of imported pesticide registered under federal act.

Repealed by SL 1983, ch 281, § 3.

§ 38-20A-6. Registration not required for interplant shipments.

Notwithstanding any other provision of this chapter, registration is not required in the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person if such pesticide be not sold or offered for sale in this state.

Source: SL 1947, ch 99, § 5; SDC Supp 1960, § 22.12A05 (5); SDCL. § 39-19-6.

§ 38-20A-7. Single registration for same product sold under different labels -Statements supplemental to registration.

Repealed by SL 1998, ch 247, § 3.

§ 38-20A-8. Requiring submission of complete formula.

The secretary of agriculture may require submission of the complete formula of any pesticide, including its active and inert ingredients.

Source: SL 1947, ch 99, § 5; SDC Supp 1960, § 22.12A05 (3); SDCL. § 39-19-8: SL 1983, ch 281, § 5.

§ 38-20A-9. Registration and pesticide groundwater fees and weed and pest control fund surcharge.

Repealed by 1998, ch 247, § 4.

§ 38-20A-9.1. Portion of surcharge for weed control - Priority to meandered lakes -Review of grant requests.

Repealed by 1998, ch 247, § 5.

§ 38-20A-10. Registration of article in compliance.

If it appears to the secretary of agriculture that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of § 38-20A-16 to 38-20A-29, inclusive, the secretary shall register the article.

Source: SL 1947, ch 99, § 5; SDC Supp 1960, § 22.12A05 (2), (3); SDCL. § 39-19-10; SL 1998, ch 247, § 6.

Amendments.

The 1998 amendment deleted the last sentence, which read: "All registrations shall expire on June thirtieth following the date of issue and shall be renewed annually"; and made a minor change in phraseology.

§ 38-20A-11. Registration not a defense in criminal prosecutions.

In no event may registration of an article be construed as a defense for the commission of any offense prohibited under the provisions of §§ 38-20A-26 to 38-20A-29, inclusive.

Source: SL 1947, ch 99, § 5; SDC Supp 1960, § 22.12A05 (4); SDCL, § 39-19-11; SL 1983, ch 281, § 6.

§ 38-20A-12. Notice to applicant of deficiencies - Refusal of registration - Hearing.

If it does not appear to the secretary of agriculture that the pesticide warrants the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this chapter or regulations adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this chapter to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of the notice, the applicant does not make the required changes, the secretary may refuse to register the pesticide. The applicant may request a hearing under the provisions of chapter 1-26.

Source: SL 1947, ch 99, § 5; SDC Supp 1960, § 22.12A05 (4); SDCL. § 39-19-12; SL 1983, ch 281, § 7.

§ 38-20A-13. Cancellation of registration - Hearing.

If the secretary of agriculture determines that a pesticide or its labeling does not comply with the provisions of this chapter or regulations adopted pursuant to the provisions of this chapter, he may cancel the registration of that pesticide, subject to the hearing provisions of chapter 1-26.

Source: SL 1947, ch 99, § 5; SDC Supp 1960, § 22.12A05 (4); SDCL, § 39-19-13; SL 1983, ch 281, § 8.

Cross-References.

Procedure in contested cases, §§ 1-26-16 to 1-26-29.

§ 38-20A-14. Compliance with requirements before new registration after termination.

Repealed by SL 1983, ch 281, § 9.

§ 38-20A-15. Unauthorized disclosure of confidential information as public offense.

It is a Class 1 misdemeanor for any person to use for his own advantage, or to reveal, other than to the secretary of agriculture or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of §§ 38-20A-4 to 38-20A-13, inclusive.

Notwithstanding the provisions of § 38-20A-48, any person who, with intent to defraud, uses or reveals information relative to formulas of products acquired under authority of §§ 38-20A-4 to 38-20A-13, inclusive, commits a petty offense.

Source: SL 1947, ch 99, §§ 4, 9; SDC Supp 1960, § 22.12A04 (2) (b), 22.9931; SDCL, § 39-19-15; SL 1977, ch 190, § 416; 1992, ch 158, § 100.

Cross-References.

Petty offense procedure, Chapter 23-1A.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-20A-16. Pesticide below professed standard deemed adulterated - Substitution and abstraction of valuable ingredients.

A pesticide is adulterated if its strength or purity falls below the professed standard or quality, as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable ingredient of the pesticide has been wholly or in part abstracted.

Source: SL 1943, ch 88, § 3; 1947, ch 99, § 3; SDC Supp 1960, § 22.12A03 (1); SDCL, § 39-19-16; SL 1983, ch 281, § 10.

§ 38-20A-17. Article deemed misbranded if label misleading.

Repealed by SL 1983, ch 281, § 11.

§ 38-20A-17.1. Misbranded pesticides.

A pesticide is misbranded if:

- (1) Its labeling bears any statement, design or graphic representation relative to it or to its ingredients which is false or misleading in any particular;
- (2) It is an imitation of or is offered for sale under the name of another pesticide;
- (3) Its labeling bears any reference to registration under the provisions of this chapter;
- (4) The label accompanying it does not contain necessary instructions for use which are adequate, if complied with, for the protection of the public;
- (5) The label does not bear a necessary warning or caution statement which is adequate, if complied with, to prevent injury to living man or other vertebrate animals;
- (6) The label does not bear an ingredient statement on the part of the immediate container and on the outside container or wrapper, if one exists through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;
- (7) The label fails to clearly and plainly show the name and address of the manufacturer, registrant or person for whom manufactured; the name, brand or trademark under which it is registered and sold; and the net weight or measure of the contents of the container, subject, however, to any reasonable variations as the secretary of agriculture may permit by regulation; or
- (8) Any word, statement or other information required by the provisions of this chapter that appears on the labeling is not prominently placed on the labeling in a conspicuous manner, when compared with other words, statements, designs or graphic material on the labeling, and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Source: SL 1983. ch 281, § 19.

Cross-References.

Rodenticides and insecticides deemed misbranded, § 34-20-14.

§ 38-20A-18. Pesticide deemed misbranded if imitation or offered under name of another.

Repealed by SL 1983. ch 281. § 12.

§ 38-20A-18.1. Misbranded device.

A device is misbranded if its labeling bears any statement, design or graphic representation relative to the device which is false or misleading in any particular.

Source: SL 1983, ch 281, § 20.

§ 38-20A-19. Pesticide deemed misbranded if label refers to registration.

Repealed by SL 1983. ch 281, § 13.

§ 38-20A-20. Pesticide deemed misbranded if instructions for use not given.

Repealed by SL 1983. ch 281. § 14.

§ 38-20A-21. Pesticide deemed misbranded if warning statement not included.

Repealed by SL 1983, ch 281, § 15.

§ 38-20A-22. Pesticide deemed misbranded if ingredient statement not included.

Repealed by SL 1983, ch 281, § 16.

§ 38-20A-23. Pesticide deemed misbranded if manufacturer, trade name and quantity not shown.

Repealed by SL 1983. ch 281, § 17.

§ 38-20A-24. Pesticide deemed misbranded if required information not conspicuous and clear.

Repealed by SL 1983. ch 281, § 18.

§ 38-20A-25. Pesticide deemed misbranded if injurious when used as directed.

A pesticide is misbranded if, when used as directed or in accordance with commonly recognized practice. it is injurious to living man or other vertebrate animals, or to vegetation, except weeds, to which it is applied, or to the person applying the pesticide.

Source: SL 1947, ch 99, § 3; SDC Supp 1960, § 22.12A03 (3) (g); SDCL. § 39-19-25; SL 1983, ch 281, § 21.

§ 38-20A-26. Sale or distribution of adulterated or misbranded article prohibited.

No person may knowingly or willfully distribute, sell or offer for sale within this state any pesticide which is adulterated or misbranded, or any device which is misbranded.

Source: SL 1947, ch 99. § 4; SDC Supp 1960, § 22.12A04 (1) (e); SDCL, § 39-19-26; SL 1977, ch 190, § 417; 1983, ch 281, § 22.

Cross-References.

Violation of chapter as misdemeanor, § 38-20A-48.

§ 38-20A-27. Sale of pesticide not registered or not conforming to registration prohibited - Change in labeling or formula.

No person may knowingly or willfully distribute, sell or offer for sale within this state any pesticide which has not been registered pursuant to the provisions of §§ 38-20A-4 to 38-20A-13, inclusive; or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration: or any pesticide

if the composition of the pesticide differs from its composition as represented in connection with its registration. However, the secretary of agriculture may allow a change in the labeling or formula of a pesticide to be made within a registration period without requiring reregistration of the product.

Source: SL 1947, ch 99, §~ 4, 9; SDC Supp 1960. §~ 22.12A04 (1) (a), 22.9929; SDCL. §39-19-27; SL 1977, ch 190, § 418; 1983. ch 281, § 23.

Cross-References.

Violation of chapter as misdemeanor, § 38-20A-48.

§ 38-20A-28. Sale other than in authorized container prohibited - Label required.

No person may knowingly or willfully distribute, sell or offer for sale within this state any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package if there be one through which the required information on the immediate container cannot be clearly read, a label bearing clearly and plainly the information required by this chapter.

Source: SL 1947, ch 99, § 4; SDC Supp 1960, § 22.12A04 (1) (b); SDCL, § 39-19-28; SL 1977. ch 190. § 419; 1983, ch 281, § 24.

Cross-References.

Original package sales required for certain poisons, § 34-20-12.

Registration of poison sales, §§ 34-20-4, 34-20-5, 34-20-1 3.

Violation of chapter as misdemeanor, § 38-20A-48.

§ 38-20A-29. Warning label and antidote statement required on highly toxic pesticides.

No person may distribute, sell or offer for sale within this state any pesticide which contains any substance or substances in quantities highly toxic to man, unless the label bears in addition to any other matter required by this chapter:

(1) A skull and crossbones and the word "poison," both prominently printed in red figure and letters not less than one-fourth inch high on a background of distinctly contrasting color: and

(2) A statement of an antidote for the pesticide.

Source: SL 1947, ch 99, §~ 4, 6; SDC Supp 1960, §~ 22.12A04 (1) (c). 22.12A06 (1) (b); SDCL, § 39-19-29; SL 1977, ch 190, § 420; 1983. ch 281, § 25.

Cross-References.

Poisons generally, warning label required, §§ 34-20-1 to 34-20-3.

Violation of chapter as misdemeanor, § 38-20A-48.

§ 38-20A-30. Coloration required for particular poisonous pesticides - Petty offense - Exemption of particular uses - Determination of standards.

Repealed by SL 1983. ch 281, § 26.

§ 38-20A-31. Carriers exempt from penalties - Access to records.

The penalties provided for violations of the provisions of §§ 38-20A-26 to 38-20A-29, inclusive, do not apply to a carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the secretary of agriculture or his designated agent to copy all records showing transactions in and movement of the articles.

Source: SL 1947, ch 99. § 8; SDC Supp 1960, § 22.12A08 (1) (a); SDCL. § 39-19-31; SL 1983. ch 281, § 27.

§ 38-20A-32. State and federal officials exempt from penalties.

The penalties provided for violations of the provisions of §§ 38-20A-26 to 38-20A-29, inclusive, do not apply to public officials of this state or the federal government when engaged in the performance of their official duties.

Source: SL 1947, ch 99. § 8; SDC Supp 1960, § 22.12A08 (1) (b); SDCL. § 39-19-32; SL 1983. ch 281. § 28.

§ 38-20A-33. Experimental pesticides exempt from penalties - Labeling required -Special permit.

Repealed by SL 1983, ch 281, § 29.

§ 38-20A-34. Alteration or destruction of label as petty offense - Changing composition of substance.

It is a petty offense for any person to detach, alter, deface, or destroy, in whole or in part. any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter.

Source: SL 1947. ch 99, § 4; SDC Supp 1960, § 22.12A04 (2) (a); SDCL, § 39-19-34; SL 1977. ch 190. § 422.

Cross-References.

Petty offense procedure, Chapter 23-IA.

§ 38-20A-35. Exemption of articles packed for export - Provisions applicable if not exported.

No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported all the provisions of the chapter shall apply.

Source: SL 1947, ch 99, § 8; SDC Supp 1960, § 22.12A08 (2); SDCL. § 39-19-35.

§ 38-20A-36. Rules for administration of chapter - Scope.

The secretary of agriculture may establish rules promulgated pursuant to chapter 1-26 providing for sampling, analysis, inspection and labeling of pesticides or devices: requiring specific information on the label of pesticides as to the chemical identity of any active ingredient or ingredients thereof; requiring registration of bulk pesticides and approval of site and conditions by which bulk pesticides are handled; stored and produced and requiring on the label an accurate statement of the quantity of any active ingredient in terms of weight per unit measure of the commodity as sold, if he finds the label information necessary for the protection of the user, environment and for correct application of pesticides.

Source: SL 1947. ch 99, § 6; 1949. ch 86; SDC Supp 1960, § 22.12A06 (2); SDCL. § 39-19-36: SL 1983, ch 281. § 30; 1986, ch 27. § 45; 1986. ch 326. § 39.

Cross-References.

Administrative rules of Department of Agriculture continued, § 1-26A-1.9.

Rules and regulations, procedure for adoption, §~ 1-26-4 to 1-26-14.

§ 38-20A-37. Cooperation with other state and federal agencies in enforcement.

The secretary of agriculture is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, the United States Department of Agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

Source: SL 1947, ch 99, § 12; SDC Supp 1960, § 22.12A11; SDCL. § 39-19-37.

§ 38-20A-38. Regulations in conformity with federal standards - Hearing.

The secretary of agriculture may establish rules pursuant to chapter 1-26 applicable to and in conformity with the primary standards established by this chapter that have been or may be prescribed by the United States Department of Agriculture, United States Environmental Protection Agency or other federal agency with respect to pesticides.

Source: SL 1947, ch 99, § 6; SDC Supp 1960, § 22.12A06 (3); SDCL, § 39-19-38; SL 1983, ch 281, § 31; 1986, ch 326, § 40.

Cross-References.

Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

§ 38-20A-39. Inspection and sampling - Access to premises and records - Identification and examination of samples.

The secretary of agriculture may inspect and sample pesticides and devices kept or offered for sale, sold or distributed within this state at the time and place and to the extent he finds necessary to confirm their compliance with the provisions of this chapter. The secretary and his duly authorized agents have all the rights of visitation, inspection, sampling and access to places, property, containers and records as necessary to enforce the provisions of this chapter. All samples collected shall be sealed and properly identified in the presence of the dealer or person from whom taken and shall be promptly forwarded to the director of laboratories for examination. The director of laboratories shall examine all samples and to report his results promptly to the secretary.

Source: SL 1949, ch 86; SDC Supp 1960, § 22.12A06 (2); SDCL, § 39-19-39; SL 1983, ch 281, §32.

Cross-References.

Director of laboratories, Chapter 1-49.

§ 38-20A-40. Examination of articles to determine compliance.

Repealed by SL 1983. ch 281. § 33.

§ 38-20A-41. Stop-sale order on pesticide or device in violation - Attachment to article - Notice - Effect of order.

If the secretary of agriculture has reasonable cause to believe a pesticide or a device is being distributed, sold or offered for sale within this state in a manner inconsistent with any of the provisions of this chapter, or of any of the regulations adopted pursuant to the provisions of this chapter, lie may issue and serve a written “stop-sale” order upon the owner or custodian of the pesticide or device. If the owner or custodian is not available for service of the order, the order may be attached to the pesticide or device and the secretary shall notify the owner or custodian and the registrant. The pesticide or device may not be sold, used or removed until it has met the provisions of this chapter and the pesticide or device has been released by written order under conditions specified by the secretary or the violation has been otherwise rectified as provided in this chapter.

Source: SL 1977. ch 318; 1983. ch 281, § 34.

§ 38-20A-42. Seizure and condemnation of pesticides not in compliance.

Repealed by SL 1983, ch 281, § 35.

§ 38-20A-43. Seizure and condemnation of misbranded devices.

Repealed by SL 1983, ch 281, § 36.

§ 38-20A-44. Costs and expenses of condemnation.

Repealed by SL 1983, ch 281, § 37.

§ 38-20A-45. Destruction or sale of condemned article - Proceeds paid into treasury.

Repealed by SL 1983, ch 281, § 38.

§ 38-20A-46. Payment of costs and bond to permit relabeling or reprocessing of condemned article.

Upon payment of costs and sufficient assurance that a pesticide or device subject to a “stop-sale” order pursuant to the provisions of § 38-20A-41 will not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to its owner for relabeling or reprocessing.

Source: SL 1947, ch 99, § 10; SDC Supp 1960, § 22.12A09 (2); SDCL, § 39-19-45; SL 1983, ch 281, § 39.

§ 38-20A-47. Prohibited contracts void - Action on contract prohibited.

Any contract for the sale of a product in violation of the provisions of this chapter is void. No action may be maintained in any court for the purchase price or value of any product, the sale of which is prohibited. No person is liable for the price or value of any product furnished in violation of any of the provisions of this chapter.

Source: SDC 1939, § 22.0106; SDCL, § 39-1-7; SL 1983, ch 281, § 40.

§ 38-20A-48. Violation of chapter as misdemeanor.

Any person violating any provision of this chapter which is not otherwise classified is guilty of a Class 2 misdemeanor.

Source: SL 1947, ch 99, § 9; SDC Supp 1960, § 22.9930; SDCL, § 39-19-46; SL 1977, ch 190, §423; 1983.ch281, §§ 43.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-20A-49. Notice to offender of contemplated criminal proceedings - Opportunity to present views - Reference to state’s attorney.

If it appears from an examination pursuant to the provisions of § 38-20A-39 that a pesticide or device fails to comply with the provisions of this chapter and the secretary contemplates instituting criminal proceedings against a person, he shall notify that person. A person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to the contemplated proceedings. If in the opinion of the secretary it appears that the provisions of the chapter have been violated by the person, the secretary shall refer the facts to the state’s attorney for the county in which the violation occurred with a copy of the results of the analysis or the examination of the pesticide or device.

Source: SL 1947, ch 99, § 7; SDC Supp 1960. § 22.12A07 (1); SDCL. § 39-19-48; SL 1983. ch 281, § 41.

§ 38-20A-50. Prosecution not required for minor violations.

Nothing in this chapter requires the secretary of agriculture to report for prosecution or for institution of other proceedings minor violations of this chapter whenever he believes that the public interests will be best served by a written warning.

Source: SL 1947, ch 99, § 7; SDC Supp 1960, § 22.12A07 (1); SDCL. § 39-19-49; SL 1983. ch 281, § 42.

§ 38-20A-51. Prosecution of reported violations.

It shall be the duty of each state's attorney to whom any violation of this chapter is reported to cause appropriate proceedings to be instituted and prosecuted without delay.

Source: SL 1947. ch 99. § 7; SDC Supp 1960. § 22.12A07 (2); SDCL. § 39-19-50.

§ 38-20A-52. Publication of judgments.

The secretary of agriculture shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this chapter.

Source: SL 1947, ch 99. § 7; SDC Supp 1960, § 22.12A07 (3); SDCL, § 39-19-5 1. § 38-20A-53. Citation of chapter.

This chapter may be cited as the Insecticide, Fungicide, and Rodenticide Act of 1947.

Source: SL 1947. ch 99, § 1; SDC Supp 1960, § 22.12A01; SDCL, § 39-19-52.

§ 38-20A-54. Promulgation of rules to develop a waste pesticide collection, disposal, and container recycling program.

For the purposes of developing a waste pesticide collection and disposal program and a pesticide container recycling program, the secretary of agriculture may promulgate rules pursuant to chapter 1-26 to:

- (1) Assess an additional annual fee, until June 30. 1997, on pesticides registered pursuant to **§38-20A-9**, not to exceed twenty-five dollars per product;
- (2) Enter into agreements with private entities and cooperate with other local, state, or federal agencies to fulfill the goals of the program;
- (3) Define the types and condition of pesticide containers to be accepted through the recycling program;
- (4) Define the kind and condition of pesticides to be accepted through the waste pesticide collection and disposal program;

(5) Establish procedures for collecting waste pesticides for disposal and pesticide containers for recycling; and

(6) Develop criteria for establishing pesticide and pesticide container collection Sites.

Source: SL 1992, ch 282, § 1; 1995, ch 232.

§ 38-20A-55. Establishment of advisory committee - Members - Duties.

The secretary of agriculture may establish an advisory committee to oversee development and implementation of the program established in §§ 38-20A-54 to 38-20A-57, inclusive. Committee members shall represent entities or agencies cooperating with the Department of Agriculture in the pesticide container recycling and pesticide disposal program. Duties of the advisory committee shall include establishing an educational effort on waste minimization and container rinsing and promoting waste pesticide and pesticide container collection.

Source: SL 1992, ch 282, § 4.

§ 38-20A-56. Creation of pesticide recycling and disposal fund - Interest -Appropriation.

Moneys obtained pursuant to §§ 38-20A-54 to 38-20A-57, inclusive, shall be deposited into the pesticide recycling and disposal fund, which is hereby created within the state treasury. Interest accrued on moneys contained in the fund shall be deposited to the fund. All moneys in the pesticide recycling and disposal fund are continuously appropriated to the Department of Agriculture to carry out the provisions of §§ 38-20A-54 to 38-20A-57, inclusive.

Source: SL 1992, ch 282, § 5.

§ 38-20A-57. Acceptance of donations.

For the purposes of §§ 38-20A-54 to 38-20A-57, inclusive, the secretary may accept donations of funds, property, services or other assistance from public or private sources.

Source: SL 1992, ch 282, § 6.

§ 38-20A-58. Establishment of public lands weed and pest fund - interest -Expenditures.

There is hereby established within the state treasury the public lands weed and pest fund. Interest accrued on money in the fund shall be deposited to the fund. All money in the public lands weed and pest fund shall be budgeted and expended in accordance with Title 4 by the Department of School and Public Lands for weed and pest control on school and public lands and meandered lake lands. At the end of each fiscal year, any unobligated cash in the public lands weed and pest fund in excess of three hundred thousand dollars shall revert to the weed and pest fund created in § 38-22-35.

Source: SL 1993, ch 305, § 2; 1998, ch 247, § 7.

Amendments.

The 1998 amendment, at the end of the third sentence, added “and meandered lake lands; and added the last sentence.

§ 38-20A-59. Allocation of fees.

The biennial application fee for each pesticide registered in § 38-20A-4 shall be distributed as follows:

- (1) Forty dollars shall be deposited in the pesticide regulatory fund created in § 38-1-57;
- (2) Forty-two dollars and fifty cents shall be deposited in the weed and pest fund created in § 38-22-35;
- (3) Forty-two dollars and fifty cents shall be deposited in the public lands weed and pest fund created in § 38-20A-58;
- (4) Thirty dollars shall be deposited within the agricultural experiment station pursuant to chapter 13-58; and
- (5) Twenty dollars shall be deposited within the cooperative extension service pursuant to chapter 13-54.

The late renewal fee in § 38-20A-4 shall be divided equally among the weed and pest fund created in § 38-22-35, the pesticide regulatory fund created in § 38-21-57, and the public lands weed and pest fund created in § 38-20A-58.

Source: SL 1998, ch 247, § 2.

**CHAPTER 38-21
AGRICULTURAL PESTICIDE APPLICATION**

Section

- 38-21-1 to 38-21-13. Repealed.
- 38-21-14 Definition of terms.
- 38-21-14.1 Safety instruction for bean buggy or bean bar rides.
- 38-21-15 Pesticide handling causing injury or pollution prohibited - Rules and regulations - Penalty for violation.
- 38-21-15.1 Bulk pesticide storage facility permit - Approval of plans for construction and operation - Revocation of permit - Operation without permit as misdemeanor.
- 38-21-15.2 Operation without permit - Civil penalty, injunctive or declaratory relief
- 38-21-15.3 Plans prepared by registered professional engineer not required nor prohibited.
- 38-21-16 Reporting of pesticide accidents.
- 38-21-17 Applicator’s license required to apply pesticides - Annual fee - Exemption - Penalty for violation.
- 38-21-18 Standards for certification of applicators.
- 38-21-19 Repealed.
- 38-21-20 Issuance of applicator’s license to qualified applicants.
- 38-21-21 Written explanation when license not issued.
- 38-21-22 Restrictions on applicator’s license.
- 38-21-23 Certification required for private application of pesticide - Fee - Penalty for violation.

38-21 -24 Records required of private and commercial applicators.

38-21-25 Repealed.

38-21-26 Expiration of applicator's license.

38-21-27 to 38-21-32. Repealed.

38-21-33 Classes of certifications and licenses.

38-21-33.1 Unlicensed operation as pesticide dealer as misdemeanor - Biennial expiration - Additional penalty for violation.

38-21-33.2 Exemption for physicians, veterinarians and pharmacists making minimum sales.

38-21-33.3 Exemption for pesticide applicators and government agencies.

38-21-33.4 Dealer's license required for each outlet - License for distribution from out-of-state outlet - Transitory locations prohibited.

38-21-33.5 Dealers' license fees - Form of application.

38-21-33.6 Denial, suspension or revocation of dealer's license - Hearing.

38-21-33.7 Repealed.

38-21-33.8 Exemption from purchasing poison license and maintaining poison register.

38-21-34 One license fee only.

38-21-35 Veterinarians exempt in normal course of practice.

38-21-36 Research applications under laboratory conditions exempt.

38-21-37 Application without compensation exempt.

38-21-38 Personal farm use exempt.

38-21-39 Restricted-use pesticide classifications.

38-21-39.1 Unlicensed sale of restricted-use pesticide as misdemeanor - Additional penalty

38-21-39.2 Sale of restricted-use pesticide to unlicensed person by licensed dealer as misdemeanor - Additional penalty for violation.

38-21-39.3 Uncertified buying of restricted-use pesticide as misdemeanor - Additional penalty for violation.

38-21-40 Certification required for use of restricted-use pesticides - Restrictions - Criteria - Penalty for violation.

38-21-41 Reciprocal waiver of examinations.

38-21-42 Renewal of license or certification without examination - Exceptions.

38-21-43 Penalty for late renewal.

38-21-44 Suspensions denial, revocation or modification of license or certification - Grounds - Penalty for violation - Action against violator.

38-21-45 Liability for pesticide damage unaffected by chapter.

38-21-46 Damage claims - Filing with secretary - Time.

38-21-47 Notice of receipt of damage claim - Copies furnished - Inspection of damages - Determination of merit.

38-21-48 Observation of claimed damage to be permitted.

38-21-49 Failure to file damage statement not a violation - Refusal to hold suspension or revocation hearing when statement not filed.

38-21-50 Repealed.

38-21-50.1 Application without license as misdemeanor - Additional penalty for violation.

38-21-50.2 Damages to person injured not lessened.

38-21-51 Administration and enforcement of chapter - Regulations.

38-21-52 Cooperation and agreements with other agencies and governmental units.

38-21-53 Entry and inspection of premises by secretary.

38-21-54 Search warrant when access denied.

38-21-55 Injunction of violations.

38-21-56 Promulgation of rules for notification of pesticide application.

38-21-57 Pesticide regulatory fund - Administration - Expenditures.

COMMISSION NOTE

The code commission has deleted internal references to repealed sections throughout this chapter.

CROSS-REFERENCES

Groundwater protection strategy, coordination of activities, § 34A-2-103.

Use of fertilizers and pesticides, formation of state management plans regarding protection of waters and prevention of pollution, § 34A-2-109.

§ 38-21-1. Permit required to engage in business.

Repealed by SL 1974, ch 255 § 35.

§ 38-21-2. Permit required to own or lease aircraft used in spraying or dusting.

Repealed by SL 1974. ch 255. § 35.

§ 38-21-3. Permit required to fly aircraft used in spraying or dusting.

Repealed by SL 1974, ch 255. § 35.

§ 38-21-4. Application for permits - Fee.

Repealed by SL 1974, ch 255, § 35.

§ 38-21-5. Affidavit as to outstanding claims required of applicant - Statement of net worth - Unsettled claims as cause for denial or revocation of license.

Repealed by SL 1974, ch 255. § 35.

§ 38-21-6. Bond required of nonresident applying for permit to engage in business.

Repealed by SL 1974. ch 255. § 35.

§ 38-21-7. Compliance with aviation laws required for aircraft or pilot permit.

Repealed by SL 1974. ch 255. § 35.

§ 38-21-8. Endorsement by director of aeronautics as to compliance with aviation laws.

Repealed by SL 1974, ch 255, § 35.

§ 38-21-9. Permit fee deposited in treasury - Expiration of permit.

Repealed by SL 1974, ch 255, § 35.

§ 38-21-10. Fee refunded on refusal of permit - Fee covers all operations.

Repealed by SL 1974, ch 255, § 35.

§ 38-21-11. Adoption of rules and regulations - Enforcement.

Repealed by SL 1974, ch 255, § 35.

§ 38-21-12. Cancellation of permit - Notice and hearing.

Repealed by SL 1974, ch 255, § 35.

§ 38-21-13. Violation of chapter as misdemeanor.

Repealed by SL 1974, ch 255, § 35.

§ 38-21-14. Definition of terms.

Terms used in this chapter mean:

- (1) "Animals," all vertebrate and invertebrate species, including man;
- (2) "Bulk pesticide," any volume of a pesticide which is transported or held in an immediate reusable container in undivided quantities greater than one hundred pounds net dry weight or fifty-five U.S. gallons liquid measure. This does not include pesticides which are in the custody of the ultimate user and are fully prepared for use by him;
- (3) "Bulk pesticide storage facility," any area, location, tract of land, building, structure or premises constructed in accordance with rules promulgated by the secretary for the storage of bulk pesticides;
- (4) "Certified applicator," any individual who is certified under this chapter to use any pesticide;
- (5) "Commercial applicator," any certified applicator who uses any pesticide on any property other than as a private applicator;
- (6) "Defoliant," any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission;
- (7) "Desiccant," any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(8) "Device." 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 life. other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom;

(9) "Environment," includes water, air, land, and all plants and animals living therein, and the interrelationships which exist among these;

(10) "Equipment," any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but does not include any pressurized hand-sized household apparatus used contrivance of which the person who is applying the pesticide is the source of power or energy in making the pesticide application;

(11) "Fungus," any nonchlorophyll-bearing thallophyte, except those on or in processed food. beverages or pharmaceuticals or those on or in living animals;

(12) "Insect." any of the numerous small invertebrate animals belonging to the class insecta or to other allied classes of arthropods;

(13) "Labeling." any label and other written, printed or graphic matter:

(a) On the pesticide or device or any of its containers or wrappers:

(b) Accompanying the pesticide or device at any time; or

(c) To which reference is made on the label or in literature accompanying the pesticide or device, except accurate, nonmisleading reference to current official publications of any government institution or official agency of the United States or of this or any other state, authorized by law to conduct research in the field of pesticides;

(14) "Land." 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;

(15) "Licensed applicator," any certified applicator who is licensed under this chapter and who owns, manages or is employed by a pesticide application business which is engaged in the business of applying pesticides upon the lands of another or applies pesticides while in the performance of his duties as a government employee;

(16) "Licensed pesticide dealer," any person who is licensed under this chapter and who distributes restricted-use pesticides or pesticides whose uses or distribution are restricted by regulation;

(17) "Nematode," any invertebrate animal of the phylum ne-mathel-minthes or nematoda;

(18) "Pest." any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria, or other

microorganisms on or in living man or other living animals, which the secretary by regulation may declare to be a pest;

(19) "Pesticide," any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant or any substance or mixture of substances intended to be used as a spray adjuvant;

(20) "Plant regulator," any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop 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 or soil amendments;

(21) "Private applicator," a certified applicator who:

(a) Uses any pesticide other than a restricted-use pesticide for purposes of producing any agricultural commodity amounting to greater than one thousand dollars gross sales potential per year on property owned or rented by him or his employer, but not including any person who applies pesticides other than restricted-use pesticides while riding on agricultural pesticide spraying equipment commonly known as a bean buggy or bean bar; or

(b) Uses any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by him or his employer; or

(c) Applies any pesticide on the property of another person without compensation other than trading of personal services between producers of agricultural commodities:

(22) "Restricted-use pesticide," any pesticide classified as a restricted-use pesticide by the secretary of the Department of Agriculture;

(23) "Rinsate," any solution containing pesticide residue which is generated from washing or flushing of pesticide containers and pesticide equipment;

(24) "Secretary," the secretary of the Department of Agriculture;

(25) "Spray adjuvant," any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the pesticide with which it is to be used;

(26) "Unreasonable adverse effects on the environment," any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide:

(27) "Weed," any plant which grows where not wanted.

Source: SL 1974, ch 255, § 1; 1975, ch 251, §§ 1,3; 1976, ch 245, §§ 1,2; 1985, ch 312, § 1; 1985, ch 377, § 2; 1986, ch 332, § 1; 1988, ch 316, § 1; 1991, ch 326, § 1; 1992, ch 283, § 1.

Cross-References.

Application of statutory definitions, § 2-14-4.

§ 38-21-14.1. Safety instruction for bean buggy or bean bar rides.

Any person supervising bean buggy or bean bar riders, as defined in subdivision 38-21-14 (21) (a), shall instruct the riders in pesticide application safety procedures and in the benefits of, and procedures for, wearing protective clothing while spraying pesticides.

Source: SL 1992, ch 283, § 2.

§ 38-21-15. Pesticide handling causing injury or pollution prohibited - Rules and regulations - Penalty for violation.

No person may transport, store, use, dispose of or handle any pesticide, pesticide container, rinsate or application equipment in such a manner as to endanger or cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or to pollute groundwater or surface water. The secretary of agriculture may promulgate rules pursuant to chapter 1-26 governing the storing, transport, use, disposal of and handling of such pesticides, pesticide containers, rinsate and application equipment. Any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation.

Source: SL 1974, ch255, § 29; 1986, ch 326, §41; 1987, ch287, § 1:1991,ch 326, §2.

Cross-References.

Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

Collateral References.

Applicators, products liability - fertilizers, insecticides, pesticides, fungicides, weed killers, and the like, or articles used in application thereof, 12 ALR 4th 462.

Exterminator's tort liability for personal injury or death directly resulting from operations, 29 ALR 4th 987.

Liability of termite or other pest control or inspection contractor for work or representations 32 ALR 4th 682.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 ALR 4th 462.

Exterminator's tort liability for personal injury or death directly resulting from operations, 29 ALR 4th 987.

§ 38-21-15.1. Bulk pesticide storage facility permit - Approval of plans for construction and operation - Revocation of permit - Operation without permit as misdemeanor.

No person may establish or operate a bulk pesticide storage facility without obtaining a bulk pesticide storage facility permit from the secretary. The secretary may establish by rule pursuant to chapter 1-26, a bulk pesticide storage facility permit system and operational requirements

necessary for secondary containment of bulk pesticide for the protection of the environment and human health. The secretary may require that appropriate plans and specifications for construction and operation of a bulk pesticide storage facility be submitted for approval prior to the issuance, modification, suspension or revocation of a permit. If a bulk pesticide storage facility is operating in violation of the permit requirements established pursuant to rules promulgated under this section, the secretary may grant a reasonable period of time for the facility to comply with the rules. If the facility does not comply with the rules in the prescribed period of time, the secretary shall revoke the operating permit pursuant to chapter 1-26. Any person operating a bulk pesticide storage facility without a permit issued pursuant to this section. or operating with a revoked permit is guilty of a Class 1 misdemeanor.

Source: SL 1986, ch 332, § 3.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-21-15.2. Operation without permit - Civil penalty, injunctive or declaratory relief.

Any person who operates a bulk storage facility without a permit or violates the bulk pesticide storage facility permit provision of this chapter is subject to a civil action in circuit court for the recovery of a civil penalty not to exceed five hundred dollars for each day of violation. In addition, the secretary may enforce the provisions of this chapter by means of injunctive and declaratory relief in circuit court.

Source: SL 1986, ch 332, § 4.

§ 38-21-15.3. Plans prepared by registered professional engineer not required nor prohibited.

The department may not promulgate a rule requiring that plans, specifications and supporting information submitted for an alteration of an existing bulk pesticide storage facility or the construction of a new site be prepared by a registered professional engineer. Nothing in this section shall prohibit an operator of a bulk pesticide storage facility from voluntarily having the plans, specifications and supporting information prepared by a registered professional engineer.

Source: SL 1986,ch332. § 11.

§ 38-21-16. Reporting of pesticide accidents.

The secretary of agriculture shall establish rules pursuant to chapter 1-26 to require the reporting of significant pesticide accidents or incidents.

Source: SL 1974, ch 255, § 19; 1986. ch 326, § 42.

Cross-References.

Administrative rules of Department of Agriculture continued, § 1-26A-1.9.

Collateral References.

Exterminator's tort liability for personal injury or death directly resulting from operations, 29 ALR 4th 987.

Recovery of damages for expense of medical monitoring to detect or prevent future disease or condition, 17 ALR 5th 327.

§ 38-21-17. Applicator's license required to apply pesticides - Annual fee - Exemption - Penalty for violation.

No person may engage in the business of applying pesticides to the lands of another, advertise as being in the business of applying pesticides to the lands of another at any time, apply pesticides while in the performance of duties as a governmental employee or otherwise act as a commercial applicator without an applicator's license issued by the secretary of agriculture, unless exempted under the provisions of this chapter. The secretary shall require a fee of twenty-five dollars for each applicator license issued. The secretary of agriculture shall issue an applicator license to government employees without a license fee. The fee exempt license is valid only when the applicator is applying pesticides in the course of employment for the governmental entity. Any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation.

Source: SL 1951, ch 112, § 1; 1951, ch 113, § 1; 1953, ch 93, § 2; SDC Supp 1960. § 22.12B01 (1), (3); SDCL, §§ 38-21-1, 38-21-2; SL 1974, ch 255, § 8; 1987, ch 287, § 2; 1991, ch 326, § 3; 2001, ch 215, § 20.

Amendments.

The 2001 amendment, in the first sentence, deleted "his" preceding "duties"; in the second sentence, substituted "a fee" for "an annual fee"; and, in the fourth sentence, deleted "his" preceding "employment."

Cross-References.

Aerial applicators, adoption of rules governing, § 50-2-2.1.

Collateral References.

Exterminator's liability for personal injury or death, 29 ALR 4th 987.

Governmental unit's tort liability for injury or damage resulting from insecticide operations, 25 ALR 2d 1057.

Law Reviews.

The Weathermaker and the Law, 1 SD LRev 105 (1956).

Torts - Negligence - Crop Sprayers' Liability, 6 SD LRev 293 (1961).

§ 38-21-18. Standards for certification of applicators.

The secretary of agriculture in promulgating rules pursuant to chapter 1-26 for this chapter shall prescribe standards for the certification of applicators of pesticides. Such standards shall relate to the use and handling of the pesticides, or to the use and handling of the pesticide or class of pesticides covered by the individual's certification, and shall be relative to the hazards involved.

In determining these standards the secretary shall take into consideration standards of the federal Environmental Protection Agency.

Source: SL 1974, ch 255, § 6; 1986, ch 326, § 43.

Cross-References.

Transportation of certain hazardous materials by certain certified private applicators, § 49-28A-3.1.

§ 38-21-19. Financial responsibility for applicator's license.

Repealed by SL 1976, ch 245, § 6.

§ 38-21-20. Issuance of applicator's license to qualified applicants.

If the secretary of agriculture finds the applicant qualified to apply pesticides in the classifications he has applied for, after such examinations as the secretary shall require by regulation, and if the applicant applying for a license to engage in aerial application of pesticides has met all the requirements of the Federal Aviation Agency, the Aeronautics Commission of this state, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the secretary shall issue a licensed applicator's license limited to the classifications for which he is qualified.

Source: SL 1974, ch 255, § 9; 1976. ch 245, § 3.

§ 38-21-21. Written explanation when license not issued.

If an applicator's license is not issued as applied for, the secretary of agriculture shall inform the applicant in writing of the reasons therefor.

Source: SL 1974, ch 255, § 9.

§ 38-21-22. Restrictions on applicator's license.

The secretary of agriculture may limit the license of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified.

Source: SL 1974. ch 255, § 9.

§ 38-21-23. Certification required for private application of pesticide - Fee - Penalty for violation.

No private applicator may use any pesticide without first complying with the certification requirements determined by the secretary of agriculture as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. for that specific pesticide use. The secretary may require a fee, to be established by rules promulgated pursuant to chapter 1-26 not to exceed five dollars for each certification. Any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation.

Source: SL 1974. ch 255, § 13; 1986, ch 326, § 44; 1987, ch 287, § 3; 1991. ch 326. § 4.

§ 38-21-24. Records required of private and commercial applicators.

The secretary of agriculture may establish rules pursuant to chapter 1-26 to require private and commercial applicators to maintain such pesticide application records as he may deem necessary.

Source: SL 1974, ch 255, § 23; 1986, ch 326, § 45; 1991, ch 326, § 5.

§ 38-21-25. Cancellation of license when financial responsibility not maintained.

Repealed by SL 1976. ch 245, § 6.

§ 38-21-26. Expiration of applicator's license.

A licensed applicator's license shall expire on the last day of February of the second year following the year of issue unless it has been revoked or suspended prior thereto by the secretary of agriculture for cause, as provided for in § 38-21-44.

Source: SL 1953, ch 93, § 2; 1955, ch 73; SDC Supp 1960 § 22.12B05; SDCL, § 38-21-9; SL 1974, ch 255, § 9; 1977, ch 309, § 1; 1986. ch 332. § 5; 2001, ch 215. § 21.

Amendments.

The 2001 amendment inserted "of the second year" following "February."

§ 38-21-27. Operator's license required for employee in charge of application - Annual fee - Licensed applicators exempt - Penalty for violation.

Repealed by SL 1991. ch 326, § 6.

§ 38-21-28. Government operators subject to chapter - Limited license.

Repealed by SL 1991. ch 326. § 7.

§ 38-21-29. Issuance of operator's license to qualified applicant.

Repealed by SL 1991. ch 326, § 8.

§ 38-21-30. Written explanation if license not issued.

Repealed by SL 1991. ch 326, § 9.

§ 38-21-31. Use of restricted-use pesticide by licensed operator.

Repealed by SL 1991, ch 326. § 10.

§ 38-21-32. Expiration of operator's license.

Repealed by SL 1991.ch326, § 11.

§ 38-21-33. Classes of certifications and licenses.

The secretary of agriculture may further classify or subclassify certifications or licenses to be issued under this chapter. Such classifications may include, but shall not be limited to, pest control operators, ornamental or agricultural pesticide applicators, and right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial or manual methods used by any licensee to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents or weeds. Each classification shall be subject to separate testing procedures and requirements.

Source: SL 1974. ch 255, § 4.

§ 38-21-33.1. Unlicensed operation as pesticide dealer as misdemeanor - Biennial expiration - Additional penalty for violation.

It is a Class ' misdemeanor for any person to act in the capacity of a licensed pesticide dealer or advertise as a licensed pesticide dealer at any time without first having obtained a license from the Department of Agriculture that shall expire on the last day of February of the second year following the year of issue. In addition to any criminal penalty, any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation.

Source: SL 1975,ch251, § 4; 1977.ch 190, § 328; 1987, ch 287, § 5;2001, ch 215, § 22.

Amendments.

The 2001 amendment, in the first sentence, substituted "a license" for "an annual license"; substituted "that shall" for "which shall"; and inserted "of the second year" following "February."

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-21-33.2. Exemption for physicians, veterinarians and pharmacists making minimum sales.

Licensed physicians, veterinarians and pharmacists shall be exempt from the provisions of § 38-21-33.1 if not over three percent of total sales is derived from sale of pesticides.

Source: SL 1975, ch 251, § 4.

§ 38-21-33.3. Exemption for pesticide applicators and government agencies.

Section 38-21-33.1 shall not apply to a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application, or any federal, state, county, or municipal agency which provides pesticides only for its own programs.

Source: SL 1975, ch 251, § 6; 1977, ch 309. § 2.

Collateral References.

Products liability: seller's right to indemnity from manufacturer, 79 ALR 4th 278.

§ 38-21-33.4. Dealer's license required for each outlet - License for distribution from out-of-state outlet - Transitory locations prohibited.

A pesticide dealer's license shall be required for each location or outlet located within this state from which such pesticides are distributed: however, any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet. Licensed locations shall not be transitory.

Source: SL 1975. ch 251, § 4.

§ 38-21-33.5. Dealers' license fees - Form of application.

Application for a license shall be accompanied by a fifty dollar license fee and shall be on a form prescribed by the secretary of agriculture.

Source: SL 1975, ch 251, § 5; 2001. ch 215, § 23.

Amendments.

The 2001 amendment, in the first sentence, deleted "annual" preceding "license fee"; and deleted the second sentence, which read: "The annual license fee for any applicant who also holds a licensed applicator license shall be twenty-five dollars."

§ 38-21-33.6. Denial, suspension or revocation of dealer's license - Hearing.

The dealer's license shall be subject to denial, suspension or revocation after a hearing for any violation of this chapter, pursuant to chapter 1-26, whether committed by the dealer, or by the dealer's officer, agent or employee.

Source: SL 1975, ch 251, § 8.

Cross-References.

Procedure in licensing matters, §§ 1-26-16 to 1-26-29.

§ 38-21-33.7. Dealers' late renewal fee - Exception.

Repealed by SL 1986, ch 332. § 7.

§ 38-21-33.8. Exemption from purchasing poison license and maintaining poison register.

Any person holding a pesticide dealer license pursuant to § 38-21-33.1 is exempt from purchasing a poison license for any pesticide which is also listed as a poison under chapter 34-20 and from maintaining a poison register as required in §~ 34-20-4 and 34-20-5.

Source: SL 1986, ch 282.

§ 38-21-34. One license fee only.

No person shall be required to pay an additional license fee if such person desires to be licensed in two or more of the license classifications provided for by the secretary of agriculture under the authority of § 38-21-33.

Source: SL 1955, ch 73; SDC Supp 1960, § 22.12B05; SDCL, § 38-21-10; SL 1974, ch 255, § 5.

§ 38-21-35. Veterinarians exempt in normal course of practice.

The licensing requirements of this chapter shall not apply to any doctor of veterinary medicine applying pesticides other than restricted use to animals during the normal course of his veterinary practice if he is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and does not publicly hold himself out as a pesticide applicator.

Source: SL 1974, ch 255, § 27.

§ 38-21-36. Research applications under laboratory conditions exempt.

The licensing requirements of this chapter shall not apply to research personnel applying pesticides under laboratory conditions.

Source: SL 1974, ch 255, § 28; 1976, ch 245, § 5.

§ 38-21-37. Application without compensation exempt.

The licensing requirements of this chapter do not apply to any person using handpowered equipment to apply pesticides other than restricted use to lawns, or to ornamental shrubs and trees not in excess of twelve feet high, if applied without compensation.

Source: SL 1974, ch 255, §26; 1991, ch 326, § 12.

§ 38-21-38. Personal farm use exempt.

The licensing requirements of this chapter do not apply to any person applying pesticides for himself or for his farmer neighbors either manually or with ground equipment if he operates farm property and maintains pesticide application equipment primarily for his 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 himself out as a pesticide applicator, and operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his farmer neighbors. However, certification is required if the person is using a pesticide other than restricted-use for purposes of producing any agricultural commodity amounting to greater than one thousand dollars gross sales potential per year or if restricted-use pesticides are used for the purposes of producing any agricultural commodity.

Source: SL 1974, ch 255, § 25; 1991, ch 326, § 13.

§ 38-21-39. Restricted-use pesticide classifications.

For the purpose of uniformity and in order to enter into cooperative agreements, the secretary of agriculture may establish rules promulgated pursuant to chapter 1-26, adopting restricted-use pesticides classifications as determined by the federal Environmental Protection Agency. The secretary may also by rules promulgated pursuant to chapter 1-26 determine state restricted-use pesticides, restrict the use of certain pesticides, or disallow the use of certain pesticides for the state or for designated areas within the state.

Source: SL 1974 ch § 55, § 3; 1986. ch 326, § 47; 1991, ch 326. § 14.

Cross-References.

Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

§ 38-21-39.1. Unlicensed sale of restricted-use pesticide as misdemeanor - Additional penalty for violation.

It is a Class 2 misdemeanor for any person not licensed under the provisions of this chapter to sell any restricted-use pesticide to any person not certified under the provisions of this chapter. in addition to any criminal penalty, any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation.

Source: SL 1975. ch 251, § 9; 1977, ch 190, § 329; 1987, ch 287, § 6; 1988. ch 316. § 2:1991, ch 326. § 15.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-21-39.2. Sale of restricted-use pesticide to unlicensed person by licensed dealer as misdemeanor - Additional penalty for violation.

Any licensed pesticide dealer who sells a restricted-use pesticide to any person not licensed or certified under the provisions of this chapter is guilty of a Class 2 misdemeanor. In addition to any criminal penalty, any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation. Any licensed pesticide dealer is responsible for acts committed by his officers, agents or employees under the civil penalty provisions of this section.

Source: SL 1988, ch 316. § 3.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-21-39.3. Uncertified buying of restricted-use pesticide as misdemeanor -Additional penalty for violation.

Any person not certified under the provisions of this chapter who buys any restricted-use pesticide is guilty of a Class 2 misdemeanor. In addition to any criminal penalty, any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation.

Source: SL 1988, ch 316, § 4; 1991,ch 326, § 16.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-21-40. Certification required for use of restricted-use pesticides - Restrictions - Criteria - Penalty for violation.

No person may use any restricted-use pesticide without that person first complying with the certification requirements of this chapter or such other restrictions as may be determined by the secretary of agriculture, pursuant to § 38-21-39, as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use. In determining restrictions, the secretary shall, pursuant to § 38-21-39, consider the characteristics of the pesticide formulation such as the acute dermal inhalation toxicity; the persistence, mobility and susceptibility to biological concentration; the use experience which may reflect an inherent misuse of an unexpected good safety record which does not always follow laboratory toxicological information; the relative hazards of patterns of use such as granular soil applications, ultra-low volume or dust aerial applications, or air blast sprayer applications; and the extent of the intended use. Any person using restricted-use pesticides without complying with the certification requirements of this section is subject to a civil penalty not to exceed five thousand dollars per violation.

Source: SL 1974, ch 255, § 7; 1987, ch 287, § 7.

§ 38-21-41. Reciprocal waiver of examinations.

The secretary of agriculture may waive any examination requirement provided for under any provision of this chapter on a reciprocal basis with any other state which has substantially the same standards.

Source: SL 1974, ch 255, § 24.

§ 38-21-42. Renewal of license or certification without examination - Exceptions.

Any person holding a current valid license or certification may renew such license or certification for the next biennium without taking another examination unless the secretary of agriculture determines that additional knowledge related to classifications for which the applicant has applied makes a new examination necessary or if additional demonstration of qualifications is determined necessary for a person who has had a license suspended or revoked or has had one or more previous violations of this chapter.

Source: SL 1974, ch 255, § 15; 1986, ch 332, § 8; 1988, ch 316, § 5; 2001, ch 215, § 24.

Amendments.

The 2001 amendment substituted “biennium” for “year” preceding “without taking another examination.”

§ 38-21-43. Penalty for late renewal.

If the application for renewal of any license provided for in this chapter is not filed prior to March first in any year of expiration. a penalty of fifty dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued.

Source: SL 1974, ch 255, § 15; 1986, ch 332, § 9:2001. ch 215, § 25.

Amendments.

The 2001 amendment inserted “of expiration” following ‘in any year.’”

§ 38-21-44. Suspension, denial, revocation or modification of license or certification - Grounds - Penalty for violation - Action against violator.

The secretary of agriculture, pending inquiry and after opportunity for a hearing, pursuant to chapter 1-26, may deny, suspend, revoke or modify any provision of any license or certification issued under this chapter, if he finds that the applicant or the holder of a license or certification has committed any of the following acts, each of which is declared to be a violation of this chapter:

- (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
- (2) Made a pesticide recommendation or application inconsistent with the labeling or mixed, loaded, stored, transported, disposed, displayed or handled a pesticide or pesticide container inconsistent with the product label or labeling. However, a deviation may include the loading and handling of the manufacturer’s unbroken immediate container and provisions set forth in section 2(ee) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended through July 1, 1989;
- (3) Applied known ineffective or improper materials;
- (4) Operated faulty or unsafe equipment;
- (5) Operated in a faulty, careless or negligent manner;
- (6) Neglected or, after notice, refused to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the secretary;
- (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) Engaged in the business of applying a pesticide on the lands of another without having such license or certification as may be required by this chapter;
- (10) Used fraud or misrepresentation in making an application for, or renewal of. a license or certification;
- (11) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or certification;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license or certification to be used by another person;

(13) Made false or misleading statements to the secretary or his agents during an inspection or investigation conducted under the authority of this chapter;

(14) Impersonated any federal, state, county or city inspector or official; or

(15) Fails to maintain the aerial requirements as stated in § 38-21-20.

In addition to the administrative sanctions available to the secretary of agriculture pursuant to this section, any licensed or nonlicensed, certified or noncertified person who commits any of the above-mentioned acts is guilty of a Class 2 misdemeanor and may be assessed a civil penalty not to exceed five thousand dollars per violation by the circuit court. The secretary of agriculture is not required to seek the administrative sanctions available under this section prior to commencing an action in circuit court against an alleged violator of this section.

Source: SL 1951, ch 113, § 3; 1953, ch 93, § 2; SDC Supp 1960, § 22.12B07; SDCL, § 38-21-12; SL 1974, ch 255, § 16; 1986, ch 332, § 10; 1987, ch 287, § 8; 1990, ch 321; 1991, ch 326, § 17.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

Procedure in licensing matters, §§ 1-26-16 to 1-26-29.

Federal References.

Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.

§ 38-21-45. Liability for pesticide damage unaffected by chapter.

Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations promulgated under authority of this chapter.

Source: SL 1974, ch 255, § 34.

Collateral References.

Exterminator's tort liability for personal injury or death directly resulting from operations, 29 ALR 4th 987.

Law Reviews

Liability in the Aerial Application of Pesticides, 22 SD LRev 75 (1977).

§ 38-21-46. Damage claims - Filing with secretary - Time.

Any person claiming damages from any use of a pesticide shall file with the secretary of agriculture on a form prescribed by the secretary a written statement within thirty days after the date that the damages occurred. If a growing crop is alleged to have been damaged, the report shall be filed prior to that time that twenty-five percent of the crop has been harvested.

Source: SL 1974, ch 255, §20; 1991, ch 326, § 18.

Breach of warranty claim.

Failure to file damage claim under this section does not affect an individuals ability to bring a breach of warranty claim against a herbicide manufacturer when the herbicide fails to perform as warranted; this section is not a condition precedent or a statute of limitations to such an action. *Durham v Ciba-Geigy Corp.* (1982) 315 NW2d 696.

Collateral References.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 ALR 4th 462.

Recovery of damages for expense of medical monitoring to detect or prevent future disease or condition, 17 ALR 5th 327.

§ 38-21-47. Notice of receipt of damage claim - Copies furnished - Inspection of damages - Determination of merit.

The secretary of agriculture shall, upon receipt of a statement filed pursuant to § 38-21-46. notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed, and furnish copies of such statements as may be requested. The secretary shall inspect damages whenever possible and, if lie determines that the complaint has merit. he shall make such information available to the person claiming damage and to the person who is alleged to have caused the damage.

Source: SL 1974, ch 255, § 20.

Collateral References.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 ALR 4th 462.

§ 38-21-48. Observation of claimed damage to be permitted.

When a statement is filed under the provisions of § 38-21-46, the claimant shall permit the secretary of agriculture, the licensee and his representatives to observe during reasonable hours the lands or nontarget organism alleged to have been damaged in order that the damage may be determined.

Source: SL 1974, ch 255, § 22.

Collateral References.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 ALR 4th 462.

§ 38-21-49. Failure to file damage statement not a violation - Refusal to hold suspension or revocation hearing when statement not filed.

The failure to file such a statement under the provisions of § 38-21-46 shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by others, the secretary of agriculture may, when in the public interest, refuse to hold a hearing for the denial, suspension or revocation of a license or certification issued under this chapter.

Source: SL 1974, ch 255, § 21.

Collateral References.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 ALR 4th 462.

§ 38-21-50. Violation of chapter as misdemeanor.

Repealed by SL 1987, ch 287, § 9.

§ 38-21-50.1. Application without license as misdemeanor - Additional penalty for violation.

Any person applying pesticides to the lands of another without an applicator's license as required by § 38-21-17 is guilty of a Class 2 misdemeanor. In addition to any criminal penalty, any person who violates this section is subject to a civil penalty not to exceed five thousand dollars per violation.

Source: SL 1985, ch 377, § 4; 1987, ch 287, § 10; 1991, ch 326, § 19.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

§ 38-21-50.2. Damages to person injured not lessened.

Civil penalties specified in §§ 38-21-15, 38-21-17, 38-21-23, 38-21-33.1, 38-21-39.1, 38-21-40, 38-21-44 and 38-21-50.1 do not lessen the damages that may be awarded to any person injured.

Source: SL 1987, ch 287, § 11; 1991, ch 326, § 20.

§ 38-21-51. Administration and enforcement of chapter - Regulations.

The secretary of agriculture may establish rules promulgated pursuant to chapter 1-26 concerning:

- (1) The inspection of storage and disposal areas;
- (2) The inspection of application equipment and equipment storage areas;
- (3) The establishment of restricted pesticide uses or methods of distribution;

- (4) Standards for the transportation, storage and disposal of pesticides or pesticide containers;
- (5) The reporting of pesticide accidents and incidents;
- (6) Standards for the certification of applicators of pesticides;
- (7) Standards for the examination and testing of applicators of pesticides:
- (8) The establishment of fees for private applicator certification not to exceed five dollars per certification:
- (9) Pesticide applicator reporting and record keeping requirements:
- (10) The establishment of state restricted use pesticides for designated areas within the state;
- (11) Pesticide dealers reporting and record keeping requirements:
- (12) The establishment of certification categories and sub-categories;
- (13) The classification or sub-classification of certificates or licenses: and
- (14) The use of pesticides through irrigation systems.

Source: SL 1949, ch 87, § 6:1951, ch 112. § 3:1953, ch 93, § 2; SDC Supp 1960, § 22.12B06: SDCL, § 38-21-11: SL 1974, ch 255, § 2:1986, ch 326. § 48.

Cross-References.

Administrative rules of Department of Agriculture continued, § 1-26A-1.9.

Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

§ 38-21-52. Cooperation and agreements with other agencies and governmental units.

The secretary of agriculture may cooperate, receive grants-in-aid, and enter in to agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, to obtain assistance in the implementation of this chapter; to secure uniformity of regulations; to cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs; to develop and administer state programs for training and certification of certified applicators consistent with federal standards; to contract for training with other agencies including federal agencies for the purpose of training certified applicators; to contract for monitoring pesticides for the national plan; to prepare and submit state plans to meet federal certification standards and issuance of experimental permits; and to regulate certified applicators.

Source: SL 1974, ch 255, § 14.

§ 38-21-53. Entry and inspection of premises by secretary.

So far as it may be necessary to perform any duty pursuant to the provisions of this chapter, the secretary of agriculture may enter upon any public or private premises at any reasonable time to inspect any pesticide-related equipment and the premises on which such equipment is kept or stored, to inspect lands actually or reportedly exposed to pesticides, to inspect storage or disposal areas, to investigate complaints of injury to humans or land, to examine any records required to be maintained pursuant to this chapter, or to sample pesticides being applied or to be applied.

Source: SL 1974, ch 255, § 31.

Cross-References.

Limitations on search and seizure, Const., Art. VI, § 11.

§ 38-21-54. Search warrant when access denied.

The secretary of agriculture may apply to any court of competent jurisdiction for a search warrant authorizing access to any land or premises to which he may be denied access pursuant to the provisions of § 38-21-53.

Source: SL 1974, ch 255, § 32.

Cross-References.

Magistrate court's jurisdiction to issue warrants for searches and seizures, § 16-12A-13.

Searches and seizures, Const., art. VI, § 11; Chapter 23A-35.

§ 38-21-55. Injunction of violations.

The secretary of agriculture may bring an action in any court of competent jurisdiction to enjoin the violation or threatened violation of any provision of this chapter.

Source: SL 1974, ch 255, § 33.

Cross-References.

Injunction, Chapter 2 1-8.

§ 38-21-56. Promulgation of rules for notification of pesticide application.

The secretary of agriculture may promulgate rules pursuant to chapter 1-26 to require posting of application sites and notification of the public or other individuals who may be affected by a pesticide application that has occurred or will occur in the future.

Source: SL 1992, ch 284, § 1.

§ 38-21-57. Pesticide regulatory fund - Administration - Expenditures.

Funds collected pursuant to §§ 38-21-17, 38-21-33.5 and 38-21-43 shall be deposited with the state treasurer in a special revenue fund known as the pesticide regulatory fund. This fund shall consist of moneys from public and private sources including legislative appropriations, federal

grants, gifts and the fees received pursuant to this chapter. The fund shall be maintained separately and be administered by the department in order to defray the expenses of all activities associated with administering the pesticide program. Expenditures from the fund shall be appropriated through the normal budget process. Unexpended funds and interest shall remain in the fund until appropriated by the Legislature.

Source: SL 1993, ch 304. § 3.

Chapter

1. DEFINITIONS PERTAINING TO PESTICIDES.
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CHAPTER 12:56:01 DEFINITIONS PERTAINING TO PESTICIDES

Sec.

12:56:01:0 1. Definitions.

12:56:01:01. Definitions

Terms defined in SDCL 38-21-14 shall have the same meaning in this article. In addition, terms used in this article mean:

- (1) "Accident" an undesirable unexpected event caused by the use of a pesticide that adversely affects man or the environment;
- (2) "Act," the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135 et seq., as amended by the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973;
- (3) "Agency," the United States environmental protection agency;
- (4) "Appurtenances." valves, pumps, fittings, pipes, hoses, and metering devices that are used for transferring pesticides or otherwise used in conducting operational area activities pertaining to pesticides;
- (5) "Bulk pesticide," any volume of a pesticide which is transported or held in an immediate reusable container in undivided quantities greater than 100 pounds net dry weight or 55 U.S.

(6) "Bulk pesticide storage facility," an area, location, tract of land, building, structure, or premises constructed in accordance with rules promulgated by the secretary for the storage of bulk pesticides:

(7) "Bulk repackaging," the transfer of bulk pesticide from one container to another in an unaltered state in preparation for sale;

(8) "Carrier," a person engaged in the transporting of passengers or goods for hire:

(9) "Certification," the process by which the South Dakota department of agriculture determines whether or not a person is a competent pesticide applicator;

(10) "Clay soil," any substance consisting of a mixture of the following components in the stated percentages of total soil weight: clay particles of the size of .02 mm or less (40% minimum); silt particles of the size of .05 mm to .002 mm (40% maximum); fine sand particles of the size of .25 mm to .05 mm (45% maximum);

(11) "Compatibility," a property of a pesticide which permits its use with other chemicals without undesirable results being caused by the combination;

(12) "Competent," qualified in the performance of functions associated with pesticide application, the degree of proficiency required being directly related to the nature of the activity and the associated responsibility;

(13) "Complete destruction," alteration of pesticides by physical or chemical processes to inorganic forms, incapable of altering the environment;

(14) "Container," a package, can, bottle, bag, barrel, drum, tank, or other containing device used to enclose a pesticide or pesticide related wastes but not spray applicator tanks and nurse tanks which contain pesticides which are fully prepared for use;

(15) "Department," the department of agriculture;

(16) "Diluent," material added to a pesticide or a pesticide-related waste by the user or manufacturer to reduce the concentration of active ingredient;

(17) "Discharge," any spill, leak, deposit, dumping, or emptying, either accidental or otherwise, that results in a release of a pesticide into an uncontained portion of an operational area, but not lawful transfer, mixing, loading, unloading, repackaging, or refilling of a pesticide carried out over operational area containment and not lawful distribution, use, disposal, or application of a pesticide;

(18) "Distribute," to import, consign, sell, offer for sale, solicit orders for sale, or otherwise supply pesticide for sale or use in this state;

(19) "Drift," movement of a pesticide during or after application or use through air to a site other than the intended site of application or use;

(20) "Encapsulate," to seal a pesticide, and its container if appropriate, in an impervious container made of plastic, glass, or other material which will not be chemically degraded by the

(21) "Excess pesticides." pesticides which may not be legally sold pursuant to the Act or which are to be discarded;

(22) "Hazard." probability that a given pesticide will have an unreasonable adverse effect on man or the environment in a given situation;

(23) "Heavy metals," metallic elements of higher atomic weights, including arsenic, beryllium, cadmium, copper, lead, mercury, manganese, zinc, chromium, tin, thallium, and selenium:

(24) "Inorganic arsenicals," any compound containing arsenic in which the arsenic is not bonded to the carbon atom;

(25) "Inorganic pesticides," substances containing noncarbon hydrogen which are used as pesticides;

(26) "Lake," a pond or reservoir created by either natural or artificial means, but not ponds and appurtenances used for the treatment and disposal of wastes and permitted for such uses by the state:

(27) "Leachate," the end product of percolating a liquid through solid waste so that dissolved or suspended materials are extracted from it;

(28) "Metallo-organic pesticide," a class of carbon hydrogen pesticides containing one or more metal or metalloid atoms in the structure;

(29) "Nonpermanent bulk pesticide storage containers," mobile containers positioned on or part of movable equipment, such as trucks, trailers, and tank cars;

(30) "Open burning," combustion of a pesticide or container in any fashion other than incineration in a pesticide incinerator;

(31) "Open dumping," the placing of pesticides or pesticide containers in a land site in a manner other than prescribed by the South Dakota department of environment and natural resources in chapter 74:27:03, and which does not prevent adverse effects on the environment, and which exposes pesticides and pesticide containers to the elements, vectors, and scavengers;

(32) "Operational area," an area where the contents of pesticide containers are transferred between containers, including transfer to application equipment; where pesticides are loaded, unloaded, mixed, repackaged, or refilled; or where pesticides are cleaned, washed, or rinsed from containers or from application, handling, storage, or transportation equipment; but not a facility or location that receives or distributes pesticides in the manufacturer's original unbroken containers which remain sealed and are otherwise unopened:

(33) "Operational area containment," any structure or system constructed in accordance with chapter 12:56:17, either stationary or portable, which is effectively designed and constructed to intercept and contain pesticide discharges, including container or equipment wash water and rinsates, and to prevent escape, runoff, and leaching from an operational area;

(34) "Organic pesticides," substances containing carbon hydrogen which are used as pesticides, excluding metallo-organic compounds;

(35) "Permanent bulk pesticide storage containers," containers which are not positioned on or a part of movable equipment, such as trucks, trailers, and tank cars;

(36) "Pesticide incinerator," any installation capable of the controlled combustion of pesticides at a temperature of 1.000 degrees centigrade for two seconds dwell time that will assure complete conversion of the specific pesticide to inorganic gases and solid ash residues;

(37) "Principal operational area," the operational area where a pesticide applicator conducts the majority of the activities listed under "operational area";

(38) "Residential premises," a structure that is used wholly or in part as a human residence. including all lawns, grounds, facilities, and furnishings pertaining to that structure; a residential structure occupied on a rental basis; and a mobile home used as a residence and the site on which it is located;

(39) "Runoff," the portion of precipitation that drains from an area as surface flow;

(40) "Sanitary landfill," a disposal facility approved or permitted by the state under chapter 74:27:04, employing an engineered method of disposing of solid wastes on land in a manner which minimizes environmental hazards by spreading the solid wastes in thin layers. compacting the solid wastes to the smallest practical volume, and applying cover material at the end of each working day;

(41) "Scrubbing," washing of impurities from any process gas stream;

(42) "Soil injection," the placement of pesticides by ordinary tillage practices within the plow layer of a soil;

(43) "Specially designated landfill." a landfill designated by the South Dakota department of environment and natural resources where pesticide-related waste, pesticides. and pesticide containers can be disposed of legally and where such dumping does not expose the public, the environment, or surface and subsurface waters to any contamination;

(44) "Statute." SDCL 38-21-14 to 38-21-55, inclusive;

(45) "Stream," a river, creek. or tributary;

(46) "Transitory." a mobile nonpermanent outlet such as a truck;

(47) "Triple rinse," flushing of containers three times, each time using a volume of the normal diluent equal to approximately 20 percent of the containers' capacity, and adding the rinse liquid to the spray mixture or disposing of it by a method prescribed for the pesticide in chapter 12:56:02;

(48) "Under the direct supervision of," application of a pesticide by a competent person acting under the instruction and control of a licensed applicator or a licensed operator. even though the

licensed applicator or licensed operator is not physically present at the time and place the pesticide is applied;

(49) "Unreclaimable residues." residual materials of little or no value remaining after incineration;

(50) "Water dumping," disposal of pesticides into or on lakes, ponds, rivers, sewers, and other water systems;

(51) "Well." an artificial excavation or opening in the ground that is deeper than its largest surface dimension. that is made by digging, boring, drilling, jetting. or other artificial method for the purpose of obtaining groundwater, and that is currently used or usable or has been abandoned;

(52) "Well injection." disposal of excess pesticides and rinse liquids through a hole or shaft to a subsurface stratum;

(53) "Wetlands." those areas that are inundated or saturated by surface or groundwater and on which a prevalence of vegetation typically adapted for life in saturated soil conditions has been established.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986; 18 SDR 49, effective September 15, 1991.

General Authority:

SDCL 38-21-15, 38-21-15.1, 38-21-51.

Law Implemented:

SDCL 38-21-15, 38-21-1 5.1, 38-21-51.

CHAPTER 12:56:02 STORAGE AND DISPOSAL

Sec.

12:56:02:01.	Permissible disposal procedures.
12:56:02:02.	Prohibited storage and disposal procedures.
12:56:02:03.	Procedures for disposal of pesticides - Exceptions.
12:56:02:04.	Procedures for the disposal of organic mercury, lead, cadmium, arsenic, beryllium, selenium, and all inorganic pesticides.
12:56:02:04.01.	Disposal of pesticides identified as hazardous wastes.
12:56:02:05.	Disposal of pesticide containers and residues.
12:56:02:06.	Procedures for disposal of pesticide residue.
12:56:02:07.	Exemption for disposal of single containers.
12:56:02:08.	Storage facilities.

12:56:02:01. Permissible disposal procedures

Pesticides may be disposed of as follows:

- (1) Using them for the legal purposes originally intended, at the prescribed dosage;
- (2) Returning the pesticides to the manufacturer for potential relabeling, recovery of resources, reprocessing into other materials, or exportation of the pesticide to a country where its use may be legal;
- (3) Following the procedure set forth in § 12:56:02:03.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18.,1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-1 5.

12:56:02:02. Prohibited storage and disposal procedures

No person may dispose of or store or receive for disposal or storage any pesticide or pesticide container or pesticide container residues as follows:

- (1) So as to cause or allow open dumping of pesticides or pesticide containers;
- (2) So as to cause or allow open burning of pesticides or pesticide containers. However, the open burning by the user of small quantities of combustible containers which do not exceed more than one day's accumulation or more than 50 pounds of combustible containers and which formerly contained organic or metallo-organic pesticides, except organic mercury, lead, cadmium, beryllium, selenium, or arsenic compounds. is acceptable;
- (3) So as to cause or allow water dumping;
- (4) So as to cause or allow pesticides to be stored next to food or other articles intended for consumption by humans or animals.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-15.

12:56:02:03. Procedures for disposal of pesticides - Exceptions

The procedures in this section shall be followed in the disposal of organic and metallo-organic pesticides, except organic mercury, lead, cadmium, beryllium, selenium, or arsenic compounds.

Metallo-organic pesticides may not be incinerated until after the heavy metals are recovered from the hydrocarbon chain and then shall be incinerated in a pesticide incinerator. Organic pesticides not containing metals shall be incinerated in a pesticide incinerator.

In lieu of incineration, the pesticides may be disposed of by burial in a specially designated landfill. If specially designated landfill facilities are not available, the soil injection method may be used, under direct supervision of an agent of the secretary. If soil injection methods of disposal are not available, chemical methods and procedures may be used to degrade pesticides to forms which are not hazardous to the environment. These procedures shall be performed under the direct supervision of an agent of the secretary.

If adequate disposal methods listed in this section are not available, pesticides shall be stored as prescribed in § 12:56:02:08 until disposal facilities and methods become available.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-15.

12:56:02:04. Procedures for the disposal of organic mercury, lead, cadmium, arsenic, beryllium, selenium, and all inorganic pesticides

Organic mercury, lead, cadmium, beryllium, selenium, arsenic, and all inorganic pesticides shall be disposed of in the manner set forth in this section.

These pesticides may be chemically deactivated by converting them to nonhazardous compounds and the heavy metal resources recovered. However, if chemical deactivation facilities are not available, these pesticides shall be encapsulated and buried in a specially designated landfill. Records sufficient to permit location for retrieval shall be maintained at the landfill site in a manner approved by the South Dakota department of environment and natural resources.

If neither of the above options is available, these pesticides shall be placed in containers and stored temporarily until disposal facilities or procedures are available.

Source:

1 SDR 65, effective March 27, 1975; 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-15.

12:56:02:04.01. Disposal of pesticides identified as hazardous wastes

Any pesticide which has been identified as a hazardous waste by § 74:28:22:01 shall be treated, stored, and disposed of in accordance with the procedures established by the department of environment and natural resources for the treatment, storage, and disposal of hazardous wastes as specified by § 74:28:25:01.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-21-15.

12:56:02:05. Disposal of pesticide containers and residues

All pesticide containers and their residues shall be disposed of according to the following procedures:

- (1) Containers which formerly contained organic mercury, lead, cadmium, beryllium, selenium, or arsenic or inorganic pesticides and which have been triple rinsed and punctured to facilitate drainage shall be disposed of in a sanitary landfill, except that small quantities of combustible containers may be burned as provided by subdivision 12:56:02:07(2) or buried in open fields by the user of the pesticide if the amounts of the containers do not exceed the daily volume limits provided by subdivision 12:56:02:02(2) for open burning;
- (2) Unrinsed containers which formerly contained organic mercury, lead, cadmium, beryllium, selenium, or arsenic or inorganic pesticides shall be disposed of in a specially designated landfill or incinerated in a pesticide incinerator, except that small quantities of combustible containers may be burned as provided by subdivision 12:56:02:02(2) or buried in open fields by the user of the pesticide if the amounts of the containers do not exceed the daily volume limits provided by subdivision 12:56:02:02(2) for open burning and where light soil texture or subsurface water is not a factor, taking into consideration environmental considerations:
- (3) Containers which formerly contained other organic pesticides shall be disposed of in the manner provided in subdivision (2) of this section;
- (4) Containers which formerly contained organic pesticides and metallo-organic pesticides, except organic mercury, lead, cadmium, beryllium, selenium, or arsenic compounds, may be returned to the manufacturer for reconditioning when the manufacturer will accept such containers:
- (5) Containers which formerly contained organic pesticides and metallo-organic pesticides, except organic mercury, lead, cadmium, beryllium, selenium, or arsenic compounds and which have been triple rinsed and punctured to facilitate drainage may be crushed and sold for scrap;
- (6) Containers which formerly contained pesticides which have been identified as hazardous wastes by § 74:28:22:01 shall be treated, stored, and disposed of in accordance with the procedures established by the department of environment and natural resources for the treatment, storage, and disposal of hazardous wastes, as specified by § 74:28:25:01.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-21-15.

12:56:02:06. Procedures for disposal of pesticide residue

Residue and rinse liquids which are not added to spray mixtures in the field shall be disposed of in the manner prescribed for each specific type of pesticide as set forth in §§ 12:56:02:03 and 12:56:02:04.

Source:

1 SDR 65, effective March 27, 1975; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-1 5.

12:56:02:07. Exemption for disposal of single containers

Sections 12:56:02:01 to 12:56:02:06, inclusive, do not apply to pesticides and single containers of pesticides designed for use in the home and garden if disposed of singly during routine solid waste disposal at a sanitary landfill.

Source:

1 SDR 65, effective March 27, 1975; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-15.

12:56:02:08. Storage facilities

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, effective October 20, 1977; 12 SDR 96, repealed December 8, 1985.

**CHAPTER 12:56:03
PESTICIDE TRANSPORTATION REQUIREMENTS**

Sec.

- | | |
|-----------------|--|
| 12:56:03:01. | Transportation by commercial carriers. |
| 12:56:03:01.01. | Spills during transport. |
| 12:56:03:02. | Pesticides to be isolated during transportation. |
| 12:56:03:03. | Transportation of bulk pesticides. |

12:56:03:01. Transportation by commercial carriers

Pesticides transported by commercial carriers shall be packaged in the manufacturer's original container. Pesticides which are identified as hazardous materials shall comply with department of commerce and regulation requirements specified in § 61:23:01:02.

Source:

1 SDR 65, effective March 27, 1975; 12 SDR 96, effective December 8, 1975; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-35, 38-21-15, 38-21-16.

12:56:03:01.01. Spills during transport

The commercial carrier shall notify the department or division of emergency and disaster services within 12 hours after the spill of more than 5 gallons of liquid or 50 pounds of dry pesticide which occurs during transportation. The commercial carrier shall provide written notice of a spill to the department within 72 hours after the spill.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15, 38-21 -16.

12:56:03:02. Pesticides to be isolated during transportation

Pesticides shall not be transported by a commercial carrier in the same compartment of the vehicle with clothes, food, feed, or other material intended for use or consumption by humans or animals.

Source:

1 SDR 65, effective March 27, 1975; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-15.

12:56:03:03. Transportation of bulk pesticides

A bulk pesticide storage container being transported shall comply with department of commerce and regulation requirements in § 61:23:01:02 and shall be secured to prevent significant movement during transportation. The container shall prominently bear the registered product label for the pesticide contained in it.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1. 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15, 38-21-16.

**CHAPTER 12:56:04
COMMERCIAL APPLICATORS**

Sec.

12:56:04:0 1. Agricultural plant pest control.

12:56:04:02.	Agricultural animal pest control.
12:56:04:03.	Forest pest control.
12:56:04:04.	Ornamental and turf pest control.
12:56:04:05.	Seed treatment.
12:56:04:06.	Aquatic pest control.
12:56:04:07.	Right-of-way pest control.
12:56:04:08.	Industrial, institutional, structural, and health related pest control.
12:56:04:09.	Public health pest control.
12:56:04:10.	Regulatory pest control.
12:56:04:11.	Demonstration and research pest control.
12:56:04:12.	Rodent and bird pest control.
12:56:04:12.01.	Predator pest control.
12:56:04:12.02.	Grain fumigation pest control.
12:56:04:12.03.	Wood preservative pest control.
12:56:04:12.04.	Livestock protection collar.
12:56:04:13.	Applicators' subclassifications.
12:56:04:14.	Licensed applicators classified by types of pesticides.

12:56:04:01. Agricultural plant pest control

Commercial applicators using or supervising the use of restricted-use pesticides on lands used in the production of agricultural crops, including but not limited to feed grains, soybeans, forage, vegetables, small fruits, tree fruits, and nuts, as well as on grasslands and non-crop agricultural lands must be certified for agricultural plant pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:02. Agricultural animal pest control

Commercial applicators using or supervising the use of restricted-use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and other livestock and to places on or in which animals are confined, must be certified for agricultural animal pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:03. Forest pest control

Commercial applicators using or supervising the use of restricted-use pesticides in forests, forest nurseries, and forest seed-producing areas must be certified for forest pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:04. Ornamental and turf pest control

Commercial applicators using or supervising the use of restricted-use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf must be certified for ornamental and turf pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:05. Seed treatment

Commercial applicators using or supervising the use of restricted-use pesticides on seeds must be certified for seed treatment. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:06. Aquatic pest control

Commercial applicators using or supervising the use of any restricted-use pesticide purposely applied to standing or running water, excluding commercial applicators engaged in public health-related activities included in § 12:56:06:09 must be certified for aquatic pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:07. Right-of-way pest control

Commercial applicators using or supervising the use of restricted-use pesticides in the maintenance of rights-of-way, including but not limited to public roads, electric power lines, pipelines, and railway rights-of-way must be certified for right-of-way pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:08. Industrial, institutional, structural, and health related pest control

Commercial applicators using or supervising the use of restricted-use pesticides in, on, or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including but not limited to warehouses, grain elevators, adjacent structures and areas public or private, and for the protection of stored, processed, or manufactured products must be certified for industrial, institutional, structural, and health-related pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:09. Public health pest control

Commercial applicators and state, federal or other governmental employees using or supervising the use of restricted-use pesticides in public health programs for the management of control of pests having medical and public health importance must be certified for public health pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:10. Regulatory pest control

Commercial applicators and state, federal, or other governmental employees using or supervising the use of restricted-use pesticides in the control of regulated pests under state or federal quarantine with the exception of noxious weeds must be certified for regulatory pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR Y'8 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:11. Demonstration and research pest control

Persons who demonstrate to the public the proper use and methods of application of restricted-use pesticides or supervise such a demonstration must be certified for demonstration pest control. Licensed applicators in this classification shall be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:12. Rodent and bird pest control

Commercial applicators using or supervising the use of restricted-use pesticides in the control of rodents or birds must be certified for rodent and bird pest control. Licensed applicators in this classification must be certified and licensed to use any pesticide.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:12.01. Predator pest control

Commercial applicators using or supervising the use of restricted-use pesticides in control of predators must be certified for predator pest control. Licensed applicators in this classification must be certified and licensed to use any pesticide.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:12.02. Grain fumigation pest control

Commercial applicators using or supervising the use of restricted-use pesticides on stored grain or grain in transit to control pests must be certified for grain fumigation pest control. Licensed applicators in this classification must be certified and licensed to use any pesticide.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:12.03. Wood preservative pest control

Commercial applicators using or supervising the use of restricted-use pesticides to control pests that damage or destroy wood must be certified for wood preservative pest control. Licensed applicators in this classification must be certified and licensed to use any pesticide.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-51.

12:56:04:12.04. Livestock protection collar

Commercial applicators using the restricted use livestock protection collar for control of coyote predation must be certified for the use of the livestock protection collar.

Source:

17 SDR 116, effective February 14, 1991.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:13. Applicators' subclassifications

All licensed applicators and licensed operators who use or supervise the use of aerially applied pesticides shall be subclassified as follows:

- (1) Persons qualifying under § 70:02:02:02 of the aeronautical division's rules shall be subclassified as a class A permit holder;
- (2) Persons qualifying under § 70:02:02:03 of the aeronautical division's rules shall be subclassified as a class B permit holder;
- (3) All persons not qualifying for the subclasses specified in subdivisions (1) and (2) shall be restricted to ground application.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:04:14. Licensed applicators classified by types of pesticides

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, repealed October 20, 1977.

**CHAPTER 12:56:05
CERTIFICATION OF APPLICATORS**

Sec.

12:56:05:01.	Renewal of applicator certification.
12:56:05:02.	Initial certification based on examination.
12:56:05:03.	Provisions for reexamination.
12:56:05:04.	General standards for certification of commercial applicators.
12:56:05:04.01.	Additional standards for certification in agricultural plant pest control.
12:56:05:04.02.	Additional standards for certification in agricultural animal pest control.
12:56:05:04.03.	Additional standards for certification in forest pest control.
12:56:05:04.04.	Additional standards for certification in ornamental and turf pest control.
12:56:05:04.05.	Additional standards for certification in seed treatment.
12:56:05:04.06.	Additional standards for certification in aquatic pest control.
12:56:05:04.07.	Additional standards for certification in right-of-way pest control.
12:56:05:04.08.	Additional standards for certification in industrial, institutional, structural, and health related pest control.
12:56:05:04.09.	Additional standards for certification in public health pest control.
12:56:05 :04.10.	Additional standards for certification in regulatory pest control.
12:56:05:04.11.	Additional standards for certification in demonstration and research pest control.
12:56:05:04.12.	Additional standards for certification in rodent and bird pest control.
12:56:05:04.13.	Additional standards for certification in predator pest control.
12:56:05:04.14.	Additional standards for certification in grain fumigation pest control.
12:56:05:04.15.	Additional standards for certification in wood preservative pest control.
12:56:05:04.16.	Additional standards for certification in use of livestock protection collar.
12:56:05:05.	Test to include knowledge of laws and regulations.
12:56:05:05.01.	Supervision standards for noncertified applicators.
12:56:05:06.	Contents of application for applicator license.
12:56:05:07.	Information to be included on aerial application.

- 12:56:05:08. Applicant for licensed applicator license must prove financial responsibility.
- 12:56:05:09. Amount of bond or liability insurance - Minimum requirements.
- 12:56:05:10. Exclusions on policy.
- 12:56:05:11. Notice to be given upon cancellation of policy.
- 12:56:05:12. Authorization of insurer or surplus line broker.

12:56:05:01. Renewal of applicator certification

Certification required for an applicator's license shall be maintained by taking and passing a written open book examination every two years following the initial certification by a written open book examination. Certification requirements must be met before a license can be issued.

In lieu of a renewal examination, attendance at a certification shortcourse held under the direction of the department shall qualify the licensed applicator for maintenance of certification.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:05:02. Initial certification based on examination

To be initially certified prior to obtaining an applicator's license. a written, open book examination furnished by the department shall be taken and passed with a score of at least 70 percent. Applicators requiring a license must be certified to be eligible for a license.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:05:03. Provisions for reexamination

Applicants failing to pass a certification examination may take a reexamination three days after notification of a failure.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.

12:56:05:04. General standards for certification of commercial applicators

To pass a certification examination, all commercial applicators shall demonstrate their competence in pest control and the safe use of pesticides. They shall be tested on their understanding of the following:

(1) Labels and labeling:

- (a) The general format and terminology of pesticide labels and labeling;
- (b) Understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
- (c) The classification of the product, general or restricted; and
- (d) The necessity for use consistent with the label;

(2) Safety factors:

- (a) Pesticide toxicity and hazard to man and common exposure routes;
- (b) Common types and causes of pesticide accidents;
- (c) Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
- (d) Need for and use of protective clothing and equipment;
- (e) Symptoms of pesticide poisoning;
- (f) First aid and other procedures to be followed in case of a pesticide accident; and

(g) Identification, storage, transport, handling, mixing, and disposal methods for pesticides and pesticide containers;

(3) Potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as the following:

- (a) Weather and other climatic conditions;
- (b) Types of terrain, soil, and other substrate;
- (c) Presence of nontarget organisms; and
- (d) Drainage patterns;

(4) Pests:

- (a) Common features of pest organisms;
- (b) Characteristics of damage needed for pest recognition;
- (c) Recognition of pests to be controlled; and
- (d) Pest development and biology as it may be relevant to problem identification and control;

(5) Pesticides:

- (a) Types of pesticides;
- (b) Types of formulations of pesticides;
- (c) Compatibility, synergism, persistence, and toxicity of the formulations of pesticides;
- (d) Hazards and residues associated with use of pesticides;
- (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
- (f) Dilution procedures used in pesticides;

(6) Operation of pesticide application equipment:

- (a) Types of equipment and advantages and limitations of each type: and
- (b) Uses, maintenance, and calibration of equipment.

(7) Pesticide application methods:

- (a) Methods and procedures used to apply various formulations of pesticides, such as dust, wettable powders, emulsions, solutions, and gases, together with a knowledge of which method of application to use in a given situation;

(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse: and

(c) Prevention of drift and pesticide loss into the environment.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.01. Additional standards for certification in agricultural plant pest control

In addition to meeting general standards in § 12:56:05:04, all commercial applicators classified within the classification of agricultural plant pest control shall be tested on their understanding of crops grown and the specific pests of those crops which they may be treating with pesticides, including the following:

- (1) Soil and water problems;
- (2) Preharvest intervals;
- (3) Re-entry intervals;
- (4) Phytotoxicity;
- (5) Potential for environmental contamination:
- (6) Nontarget injury; and
- (7) Community problems resulting from the use of restricted-use pesticides in agricultural areas.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.02. Additional standards for certification in agricultural animal pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of agricultural animal pest control shall be tested on their understanding of such animals and their associated pests, including the following:

- (1) Specific pesticide toxicity and residue potential;
- (2) The relative hazards associated with such factors as the following:
 - (a) Formulations;
 - (b) Application techniques;
 - (c) Age of animals;
 - (d) Stress; and
 - (e) Extent of treatment.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04. 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.03. Additional standards for certification in forest pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of forest pest control shall be tested on their understanding of types of forest, forest nurseries, and seed production in South Dakota and the pests involved, including the following:

- (1) Cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications;
- (2) The relative biotic agents and their vulnerability to the pesticides applied;

- (3) Control methods which minimize unintended secondary effects on wildlife; and
- (4) Proper use of specialized equipment as it may relate to meteorological factors and adjacent land use.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.04. Additional standards for certification in ornamental and turf pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of ornamental and turf pest control shall be tested on their understanding of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including the following:

- (1) Phytotoxicity;
- (2) Drift and persistence: and
- (3) Application methods to prevent hazards to humans and domestic animals.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.05. Additional standards for certification in seed treatment

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of seed treatment shall be tested on their understanding of types of seeds that require chemical protection against pest and factors, including the following:

- (1) Seed coloration.
- (2) Carriers and surface active agents which influence pesticide binding and may affect germination
- (3) Hazards associated with handling, sorting, and mixing; and
- (4) Misuse of treated seed, such as:
 - (a) Introduction of treated seed into food and feed channels: and
 - (b) Proper disposal of unused treated seed.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.06. Additional standards for certification in aquatic pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of aquatic pest control shall be tested on their understanding of the following:

- (1) Water use situation;
- (2) Downstream effects of application;
- (3) Secondary effects which can be caused by:
 - (a) Improper application rates;
 - (b) Incorrect formulations: and
 - (c) Faulty application of pesticides used in this category:
- (4) Potential pesticide effects on:

- (a) Plants:
- (b) Fish:
- (c) Birds;
- (d) Beneficial insects; and
- (e) Other nontarget aquatic organisms; and

(5) The principals of limited area application.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.07. Additional standards for certification in right-of-way pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of right-of-way pest control shall be tested on their understanding and knowledge of the following:

- (1) Excessive foliage damage;
- (2) Recognition of target pests;
- (3) Nature of herbicides and of problems caused by applying pesticides to a variety of environments and different terrains including:
 - (a) Problems caused by runoff and drift;
 - (b) The need for containment of pesticides within the right-of-way area; and
 - (c) The impact of their application activities on adjacent areas and communities.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51

Law Implemented:

SDCL 38-21-18.

12:56:05:04.08. Additional standards for certification in industrial, institutional, structural, and health related pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of industrial, institutional, structural, and health related pest control shall be tested on their understanding and knowledge of the following:

- (1) Methods to avoid hazards to babies, children, pregnant women, elderly people, and pets;
- (2) A wide variety of pests including:
 - (a) Their life cycles; and
 - (b) Types of formulations appropriate for their control;
- (3) Methods of application that avoid contamination of food and habitat; and
- (4) In addition they shall demonstrate that they know applicable environmental conditions.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.09. Additional standards for certification in public health pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of public health pest control shall be tested on their understanding and knowledge of vector-disease transmission as it relates to and influences application programs involving a wide variety of pests. They shall also be tested on their knowledge of the following:

- (1) Pests, their life cycle and habitats as a basis for control strategy;

(2) A great variety of environments ranging from streams to conditions found in buildings:
and

(3) Their practical knowledge of the importance and employment of such non-chemical control methods including the following:

(a) Sanitation:

(b) Waste disposal; and

(c) Drainage.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.10. Additional standards for certification in regulatory pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of regulatory pest control shall be tested on their understanding and knowledge of the following:

(1) Regulated pests;

(2) Applicable laws relating to quarantine and other regulations of pests: and

(3) The potential environmental impact of pesticides used in suppression and eradication programs including the following:

(a) Factors influencing introduction:

(b) Spread; and

(c) Populations dynamics of relevant pests and knowledge extended beyond their regular duties that would be applicable in other areas of the country where emergency measures may be invoked involving regulated pests and where individual judgments must be made in new situations.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.11. Additional standards for certification in demonstration and research pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of demonstration and research pest control shall be tested on their understanding of the broad spectrum of pesticide uses involving the following:

(1) The many different pest problem situations encountered in the activities associated with demonstration of pesticides; and

(2) Pesticide application techniques applicable to the particular area of pest control in which they are engaged, including the following:

(a) Their understanding of pesticide organism interactions; and

(b) Integrating pesticide use with other control methods, if such persons are engaged in the demonstration of the safe and effective use of pesticides to applicators and the general public.

Commercial applicators classified within the classification of demonstration and research pest control engaged in conducting field research, shall be tested on their knowledge and understanding of the standards in this section applicable to their particular activity or those standards within this section required for applicators engaged in demonstration.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.12. Additional standards for certification in rodent and bird pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of rodent and bird pest control shall be tested on their knowledge of the biological and behavioral patterns of target and related nontarget species, including the following:

- (1) Toxicity levels which could be expected to give selective control of pest species without causing significant damage to populations of related nontarget species;
- (2) Application techniques and practices to minimize secondary poisonings of nontarget species: and
- (3) Proper management and placement techniques of baits.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; transferred from § 12:56:05:04, 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.13. Additional standards for certification in predator pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of predator pest control shall be tested on their knowledge of the biological and behavioral patterns of target and related nontarget species, including the following:

- (1) Toxicity levels which could be expected to give selective control of pest species without causing significant damage to populations of related nontarget species;
- (2) Application techniques and practices to minimize secondary poisonings of nontarget predator species: and
- (3) Proper management and placement techniques of baits.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.14. Additional standards for certification in grain fumigation pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of grain fumigation pest control shall be tested on their knowledge of the following:

- (1) Types of pests and their life cycles;
- (2) Pest characteristics;
- (3) Application techniques associated with applying fumigants to grain under various structural and environmental conditions;
- (4) Hazards associated with fumigant use; and
- (5) Potential residue problems in food and feed from improper use.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.15. Additional standards for certification in wood preservative pest control

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of wood preservative pest control shall be tested on their knowledge of the following:

- (1) Application of wood preservatives:
 - (a) Preparation of wood for treatment;
 - (b) Methods of applying wood preservatives: and
 - (c) Factors influencing the effectiveness of wood preservatives:

(2) Protecting human health:

- (a) Hazards to applicator (acute and chronic effects);
- (b) Safety procedures to be adhered to in order to reduce exposure;
- (c) First aid: and
- (d) Wearing and care of protective equipment;

(3) Protecting the environment:

- (a) Waste disposal:
- (b) Storage and disposal of containers: and
- (c) Handling of spills; and

(4) Monitoring procedures for measurement of ambient inorganic arsenicals when appropriate.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986: 13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:04.16. Additional standards for certification in use of livestock protection collar

In addition to meeting general standards in § 12:56:05:04, commercial applicators classified within the classification of livestock protection collar shall be tested on their understanding and knowledge of the following:

- (1) Reading and understanding label and labeling information, including all use restrictions;
- (2) Recognizing the technical name, sodium fluoracetate, and understanding the basic properties of Compound 1080;
- (3) Recognizing potential hazards to humans, domestic animals, and to nontarget wildlife:
- (4) Recognizing general symptoms of poisoning by Compound 1080 in humans and domestic animals and taking appropriate action;

- (5) Recognizing situations where collars can be expected to be safe and effective in addition to being aware of alternative means of control;
- (6) Keeping required records on use of collars;
- (7) Making required reports of suspected poisoning on nontarget species and suspected poisonings of humans or domestic animals to the department of agriculture;
- (8) Distinguishing between damaged collars that can be repaired and those that must be disposed of properly;
- (9) Making repairs to damaged collars prior to reuse or proper disposal;
- (10) Proper disposal of animal remains, and vegetation or soil contaminated by a punctured collar;
- (11) Posting and maintaining bilingual warning signs at logical points of access to areas where collars are in use; and
- (12) Performing weekly or more frequent inspections of collars in use.

Source:

17 SDR 116, effective February 14, 1991.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:05. Test to include knowledge of laws and regulations

Commercial applicators shall demonstrate an understanding of state and federal laws and regulations pertaining to pesticides.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128. 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:05.01. Supervision standards for noncertified applicators

Applicators supervising noncertified applicators shall be currently certified.

The availability of the certified applicator is directly related to the hazard of the application being made by the noncertified applicator. When the certified applicator is not present, "direct supervision" may include verifiable instruction to the noncertified applicator, including detailed guidance for applying the pesticide properly and provisions for contacting the certified applicator if the certified applicator is needed. When required by the directions for use printed on the registered label of the pesticide being used by the noncertified applicator, the certified applicator shall be physically present.

Source:

4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:06. Contents of application for applicator license

An application for a licensed applicator, licensed operator, and public operator's license must contain the following:

- (1) The name of the applicant;
- (2) The applicant's partnership or organization and its permanent address;
- (3) The local base of operation and maintenance;
- (4) The telephone number;
- (5) Whether or not the applicant is applying for a licensed public operator license;
- (6) What classifications the applicant wishes to be certified for;
- (7) Whether the applicant wishes to be certified as a ground applicator, an aerial applicator. or both; and
- (8) The date and the signature of the applicant.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:07. Information to be included on aerial application

If an applicant applies for the subclass aerial application, the applicant must furnish additional information, including:

- (1) The applicant's South Dakota pilot's registration;
- (2) The applicant's federal airman's certificate number and rating;
- (3) The number of aircraft to be used in operations and their model number, make, federal number, and South Dakota's registration number;
- (4) The agricultural aircraft operator's federal aeronautics administration certificate date and number;
- (5) Total solo flight hours and the total solo flight hours in the type and class aircraft to be used;
- (6) The total of solo flight hours within the preceding 12 months in types and class of aircraft to be used;
- (7) The number of acres the applicant treated the past year in South Dakota;
- (8) The total number of hours spraying and dusting experience;
- (9) The number of equivalent hours of experience during the past year and the nature of the equivalent hours;
- (10) Whether the applicant will operate under the supervision of a class A operator's permit holder and, if so, the name, address, and South Dakota permit number;
- (11) Whether the aircraft to be used, with equipment attached, has the approval of the Federal Aeronautics Administration; and
- (12) Whether the applicant or the company or employer for which the applicant worked has ever been denied permission to spray in any state and, if so, the year and reason for denial and the state and company.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18.

12:56:05:08. Applicant for licensed applicator license must prove financial responsibility

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, repealed October 20, 1977.

12:56:05:09. Amount of bond or liability insurance - Minimum requirements

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, repealed October 20, 1977.

12:56:05:10. Exclusions on policy

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, repealed October 20, 1977.

12:56:05:11. Notice to be given upon cancellation of policy

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, repealed October 20, 1977.

12:56:05:12. Authorization of insurer or surplus line broker

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, repealed October 20, 1977.

**CHAPTER 12:56:06
DAMAGE CLAIMS**

Sec.

12:56:06:01. Contents of report form for alleged pesticide damage.

12:56:06:01. Contents of report form for alleged pesticide damage

The report form required by SDCL 38-21-46 shall contain, but shall not be limited to, the following:

- (1) Claimant's name and address;
- (2) Claimant's telephone number;
- (3) County and legal description of property where damage is alleged;
- (4) Date, approximate time, weather conditions including wind direction, and temperature when application was made;
- (5) County and legal description of property on which application was made;
- (6) Operator of property where application was made;
- (7) Description of damages;
- (8) Name of applicator or operator applying pesticides;
- (9) Name of witness, if known;
- (10) Whether ground or aerial application; crop treated;
- (11) Chemical used, if known; if the applicator was notified and, if so. when: and
- (12) The date the claim was prepared and the signature of claimant.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-46.

CHAPTER 12:56:07

COMMERCIAL APPLICATOR RECORDS

Sec.

- 12:56:07:01. Required applicator records.
- 12:56:07:02. Availability of records to the department.
- 12:56:07:03. Records to be kept for three years.
- 12:56:07:04. Applicator to make record of application available to customer.
- 12:56:07:05. Information to be furnished upon department request.

12:56:07:01. Required applicator records

Each commercial applicator shall keep records which shall include the following for each application:

- (1) The name and address of the person for whom the pesticide was applied;
- (2) The location of the land or property where the pesticide was applied;
- (3) The pest to be treated;
- (4) The acreage, area, or number of plants or animals treated or other appropriate description;
- (5) The year, month, day, and time the pesticide was applied;
- (6) The person or firm who applied the pesticide;
- (7) The trade or brand name and common name of the pesticide applied;
- (8) The company name appearing on the product label;
- (9) The weather conditions at the time of application, including direction and estimated velocity of the wind and the temperature at the time the pesticide was applied (this requirement does not apply to application of baits in bait stations or pesticide applications in or immediately adjacent to structures);
- (10) Amount of the pesticide applied and concentration in pounds or gallons per unit or percentages of active ingredient per unit of the pesticide used;
- (11) Specific crop or designated site or commodity to which pesticide application was made; and
- (12) Name and address of the applicator.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-24.

12:56:07:02. Availability of records to the department

Each licensed public operator and licensed applicator shall have all pesticide application records completed and available to the department for inspection at the close of each day.

Source:

1 SDR 65, effective March 27, 1975; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-24.

12:56:07:03. Records to be kept for three years

Records of pesticide applications made by each commercial applicator or the applicator's operators must be kept by the applicator for three years from the date of the application of any pesticides. The department must, upon written request, be furnished with a copy of these records, which must include the information required by § 12:56:07:0 1.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-24.

12:56:07:04. Applicator to make record of application available to customer

Upon written request, each licensed applicator must provide the customer with a record of each application of pesticide applied to the customer's land.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-24.

12:56:07:05. Information to be furnished upon department request

Each commercial applicator shall, upon written request, furnish the department with an annual summary for the preceding year, which shall include the following information by county: crop, site, or commodity treated, pest treated, trade or brand name and common name of pesticide applied, the percent of or pounds of active ingredient per gallon, and total volume used.

All summaries and the information therein submitted to the department shall be held in confidence unless that information is used by the department to compile an area or state-wide report of usage of pesticides by commercial applicators or is subpoenaed by a court of law.

The department shall not issue a renewed license or allow a certification to be renewed if the commercial applicator applying for such a license or certification has not submitted the requested summary for the preceding year.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-24.

**CHAPTER 12:56:08
CERTIFICATION OF LICENSED OPERATORS**

Sec.

- 12:56:08:01. Standards for certification of licensed operators.
- 12:56:08:02. Procedure for certifying operator by on the job training.
- 12:56:08:03. Items to be included on operator certification through applicator form.
- 12:56:08:04. Licenses not transferable.
- 12:56:08:05. Operator licenses renewal.

12:56:08:01. Standards for certification of licensed operators

Applicant for a licensed operator license or for renewal of a licensed operator license shall comply with both chapters 12:56:04 and 12:56:05.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-27, 38-21-29.

12:56:08:02. Procedure for certifying operator by on the job training

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, repealed January 18, 1976.

12:56:08:03. Items to be included on operator certification through applicator form

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, repealed October 20, 1977.

12:56:08:04. Licenses not transferable

A licensed operator's license is not transferable. If an operator changes employers, the operator's license is invalid and must be renewed.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-27, 38-21-29.

12:56:08:05. Operator licenses renewal

Repealed.

Source:

1 SDR 65, effective March 27, 1975; 4 SDR 23, repealed October 20, 1977.

**CHAPTER 12:56:09
CERTIFICATION OF PUBLIC OPERATORS**

Sec.

12:56:09:01. Standards for certification of public operators.

12:56:09:01. Standards for certification of public operators

All applicants for a public operator license or a renewal of a public operator license shall comply' with both chapters 12:56:05 and 12:56:04.

Source:

1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-28.

**CHAPTER 12:56:10
LICENSED PESTICIDE DEALERS**

Sec.

- 12:56:10:0 1. Licensed pesticide dealers license application form.
- 12:56:10:02. License fee for licensed applicator who is a licensed pesticide dealer.
- 12:56:10:03. Dealer license examination.
- 12:56:10:04. Dealers must attend pesticide certification shortcourse.
- 12:56:10:05. Licensed dealers selling restricted-use pesticides to uncertified private applicators.
- 12:56:10:06. Required dealer records.
- 12:56:10:07. Records to be kept for three years.
- 12:56:10:08. Availability of records to the department.

12:56:10:01. Licensed pesticide dealers' license application form

Licensed pesticide dealer license application forms shall include, but not be limited to. the following: name of applicant; firm name; firm's permanent address and telephone number: and whether or not the applicant has a current licensed pesticide applicator license.

Source:

2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.5.

12:56:10:02. License fee for licensed applicator who is a licensed pesticide dealer

There is no fee charge for a commercial pesticide applicator license to a person who has a current licensed pesticide dealer license.

Source:

2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-34.

12:56:10:03. Dealer license examination

Applicants for a licensed pesticide dealer license must be tested by writing an open book examination. This examination must be available at county extension offices and at the pesticide office of the Department of Agriculture. The standards of competence proven by taking and passing this examination by a score of at least 70 percent are the same as those standards in §12:56:05:04. If an applicant fails the exam, the applicant may be reexamined in three days.

Source:

2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.1.

12:56:10:04. Dealers must attend pesticide certification shortcourse

If a person who has taken and passed the licensed pesticide dealer license examination does not attend a certification shortcourse at least biennially, the person must be reexamined before the person may obtain a licensed pesticide dealer license.

Source:

2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1. 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-33.1.

12:56:10:05. Licensed dealers selling restricted-use pesticides to uncertified private applicators

The act of selling a restricted-use pesticide to an uncertified private applicator is prohibited except after the applicator has completed a questionnaire provided by the department to the licensed dealer and the applicator has signed the questionnaire and the licensed dealer has signed the questionnaire affirming that the dealer has discussed any incorrect responses made by the applicator on the questionnaire and is satisfied that the applicator understands the material covered by the questionnaire, the applicator is exempt from the certification as required by §~ 12:56:12:01 and 12:56:12:02.

Licensed pesticide dealers shall submit a copy of each completed questionnaire to the department weekly.

Source:

4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1. 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18, 38-21 -23, 38-21-52.

12:56:10:06. Required dealer records

Each licensed pesticide dealer shall keep records of restricted use pesticide sales. The record for each sale shall include:

- (1) The dealer's name and address and license number;
- (2) The name, address, certification or license number of the private or commercial applicator;
- (3) The date of sale; and
- (4) The trade name, quantity, and EPA registration number of the pesticide sold.

Records may be maintained in the form of a log, registry of invoices, billing tickets, or delivery tickets.

Source:

13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-51.

12:56:10:07. Records to be kept for three years

Records of restricted-use pesticide sales made by a licensed pesticide dealer or the dealer's employees must be kept by the dealer for three years from the date of the sale. The department must, upon written request, be furnished with a copy of these records, which must include the information required by § 12:56:10:06.

Source:

13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-51.

12:56:10:08. Availability of records to the department

Each licensed pesticide dealer must make firm's restricted-use pesticide sales records available to the department for inspection during normal business hours.

Source:

13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-51.

**CHAPTER 12:56:11
RESTRICTED USE PESTICIDES**

Sec.

12:56:11:01. Pesticide usage restrictions.

12:56:11:01. Pesticide usage restrictions

Pesticide labels that contain a usage restriction which are registered by the department, pursuant to SDCL 38-20A, are “restricted use” pesticides.

Source:

2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-39.

**CHAPTER 12:56:12
PRIVATE APPLICATOR CERTIFICATION**

Sec.

12:56:12:01. Standards for private applicator certification.

12:56:12:01.01. Standards for private applicator certification for use of livestock protection collar.

12:56:12:02. Private applicator certification.

12:56:12:03. Private applicator certification emergency exemption.

12:56:12:01. Standards for private applicator certification

A private applicator must demonstrate a practical knowledge of pest problems and pest control practices to the applicable agricultural operations of proper storage, use, handling, and disposal of pesticides and containers and of the legal responsibilities involved in the application, handling, and disposal of pesticides. This practical knowledge includes ability to do the following:

- (1) Recognize common pests to be controlled and damage caused by them;
- (2) Read and understand the label and labeling information including the common name of pesticide applied, pest or pests to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions, and any specific disposal procedures;
- (3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;
- (4) Recognize local environmental situations that must be considered during application to avoid contamination; and
- (5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

Source:

4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18, 38-21-23, 38-21-52.

12:56:12:01.01. Standards for private applicator certification for use of livestock protection collar

In addition to meeting standards in § 12:56:12:01, private applicators classified within the classification of livestock protection collar shall meet standards in §§ 12:56:05:04 and 12:56:05:04.16.

Source:

17 SDR 116, effective February 14, 1991.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18, 38-21-23, 38-21-51.

12:56:12:02. Private applicator certification

Private applicators shall be certified by completing either a training course approved by the department or a home study course approved by the department, except that from October 21, 1977, to October 21, 1979, an uncertified private applicator is exempt from the certification requirements for a single purchase of a single restricted-use pesticide product by completing the questionnaire process as described in § 12:56:10:05. Upon receiving a report from a licensed dealer that an uncertified private applicator has purchased a pesticide under the provisions of §12:56:10:05, the department shall notify the applicator of the necessity to become certified by attending a training course or completing a home study course before more purchases of restricted-use pesticides may be made.

Source:

4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18, 38-21-52.

12:56:12:03. Private applicator certification emergency exemption

A private applicator who has no current certification may be exempted by the secretary of agriculture from the requirements of certification after October 21, 1979, in an emergency situation, if the emergency is declared by the secretary of agriculture. However, the private applicator receiving such an exemption shall comply with provisions of the single purchase, single use as described in § 12:56:12:02.

Source:

4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-18, 38-21-52.

**CHAPTER 12:56:13
BULK PESTICIDE STORAGE**

Sec.

12:56:13:01.	Permanent bulk pesticide storage containers.
12:56:13:02	Bulk pesticide storage facility construction.
12:56:13:03.	Secondary containment.
12:56:13:04.	Bulk pesticide storage facility location.
12:56:13:05.	Effective date of bulk pesticide storage facility requirements.
12:56:13:05.01.	Bulk pesticide storage facility permit.
12:56:13:05.02.	Bulk pesticide storage facility inspection.
12:56:13:05.03.	Alteration of existing permitted bulk pesticide storage facility.
12:56:13:05.04.	Notice of a bulk pesticide storage facility inspection.
12:56:13:05.05.	Bulk pesticide storage facilities constructed prior to December 8, 1985.
12:56:13:06.	Required plans and specifications for bulk pesticide storage facilities.
12:56:13:07.	Contents of bulk pesticide storage facility permit application.
12:56:13:08.	Permanent and nonpermanent bulk pesticide storage containers.
12:56:13:09.	Underground storage.
12:56:13:10.	Spills.

12:56:13:01. Permanent bulk pesticide storage containers

Individual permanent bulk pesticide storage containers capable of holding more than 300 gallons must be located within a bulk pesticide storage facility.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986: 13 SDR 183, effective June 7, 1987.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:13:02. Bulk pesticide storage facility construction

A person shall not construct a bulk pesticide storage facility, for the storage of permanent bulk pesticide storage containers, without a means of secondary containment.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:13:03. Secondary containment

Secondary containment constructed after December 8, 1985. must be constructed according to professional engineering practices, which include the following:

(1) The walls and base must be constructed by means of either:

(a) A synthetic liner at least 30 mils thick beneath 12 inches of compacted clay soil to withstand loading conditions and the discharge of maximum tank capacity considering the full hydrostatic head of the discharged liquid;

(b) Concrete, excluding blocks and bricks, of sufficient thickness and strength to withstand loading conditions and the discharge of maximum tank capacity considering the full hydrostatic head of the discharged liquid;

(c) Steel of sufficient thickness and strength to withstand loading conditions and the discharge of maximum tank capacity considering the full hydrostatic head of discharged liquid; or

(d) Cross-linked polyolefin, defined as crosslinkable high density polyethylene, type 3. Class B, Category 5 resin with minimum 0.5 percent carbon black as defined in American Society for Testing and Materials (ASTM) standard D 1248-84, constructed with a minimum thickness of 3/8 inch, ultraviolet stabilized for outdoor use to give excellent outdoor weatherability, and with a low temperature impact strength of a minimum of 90 foot pounds of impact at -40F according to the Association of Rotational Molders (ARM) impact test. The cross-linked polyolefin must be constructed of sufficient thickness and strength to withstand loading conditions and the discharge of maximum tank capacity considering the full hydrostatic head of discharged liquid;

(2) All seams and cracks must be sealed;

(3) The capacity of the containment area must be capable of holding 110 percent of the volume of the largest container plus the volume of the butts of all the other tanks inside it: and

(4) Each cross-linked polyolefin containment structure must be permanently marked with an embossment or with a metal certification plate permanently affixed to it. The marking must be in letter and number at least 1/4 inch high located on the side of the containment structure. The marking shall certify that the containment structure complies with all requirements of this section and contain the words "meets specification of ARSD 12:56:13:03" and the date of manufacture including month and year.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986; 13 SDR 183, effective June 7, 1987.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

References:

ASTM Standard D 1248-84, "Standard Specification for Polyethylene Plastics Molding and Extrusion Materials," American Society for Testing and Materials, January 1985. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19193; \$6.

Association of Rotational Molders Low Temperature Impact Test — 114, revised through January 1986. Copies may be obtained from Association of Rotational Molders, 435 North Michigan Avenue, Chicago, IL 60611; \$4.50.

12:56:13:04. Bulk pesticide storage facility location

A bulk pesticide storage facility shall not be located in an area where spillage, loading, unloading, or secondary containment failure will threaten or cause damage to streams or water supplies. A bulk pesticide storage facility shall not be located in an area subject to flooding.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:13:05. Effective date of bulk pesticide storage facility requirements

All bulk pesticide storage facilities must be constructed and operated in compliance with these rules. Bulk pesticide storage facilities constructed prior to the effective date of these rules must be in compliance with §§ 12:56:13:01 to 12:56:13:06, inclusive, by January 1, 1987.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.
SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-15.1.

12:56:13:05.04. Notice of a bulk pesticide storage facility inspection

Separate notice shall be given for each bulk pesticide storage facility inspection. A report of the inspection shall be provided to the person in charge of the facility upon completion of the inspection.

Source:

13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-51.

12:56:13:05.05. Bulk pesticide storage facilities constructed prior to December 8, 1985

Bulk pesticide storage facilities constructed of concrete block prior to December 8, 1985, will be considered for approval after inspection by the secretary. Bulk pesticide storage facilities constructed of brick prior to December 8, 1985, will not be considered for approval. Bulk pesticide storage facilities constructed of concrete block or brick after December 8, 1985, will not be considered for approval by the secretary.

Source:

13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:13:06. Required plans and specifications for bulk pesticide storage facilities

Plans and specifications for all bulk pesticide storage facilities must be submitted to the secretary for review and approval prior to construction. Installation and operation shall be in accordance with approved plans and specifications.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-20A-36, 38-21-1 5, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-1 5, 38-21-1 5.1.

12:56:13:07. Contents of bulk pesticide storage facility permit application

A bulk pesticide storage facility permit application shall include the following:

(1) Name, address, and telephone number of the following:

- (a) Firm making application;
- (b) Firm who will operate facility; and
- (c) Firm who will construct, install, or modify site;

(2) Type of facility (new, existing, or altered);

(3) Location of facility (county, city, and township);

(4) Legal description of facility location;

(5) Size of lot owned or leased;

(6) Nature of terrain (level area, steep slope, etc.);

(7) Type of storage containers (steel, poly, etc);

(8) Number of containers, diameter, height, and capacity of each storage container;

(9) Copies of required local permits;

(10) Soil and groundwater conditions (general soil type at the site, such as clay, gravel, sand, loam, etc., and type, depth, and proximity of wells on or near the site);

(11) Surface water (approximate distance to and identity of nearby lake, stream, drainage ditch, or storm drain into which liquid could flow);

(12) Two scale drawings of plans and specifications for the facility, including other storage containers and buildings;

(13) Two copies of plumbing diagram for the facility showing location and type of pumps and valves used to control all transferring;

(14) Signature, date of signature, and title of the person certifying information on the application; and

(15) Date of approval by the secretary.

Source:

12 SDR 96 effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15, 38-21-15.1.

12:56:13:08. Permanent and nonpermanent bulk pesticide storage containers

Repealed.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986; 13 SDR 183, repealed June 7, 1987.

12:56:13:09. Underground storage

Underground bulk pesticide storage is prohibited. but a sealed catch basin used for the temporary collection of runoff or rinsate from transfer and loading areas is allowed.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-1 5.

12:56:13:10. Spills

The operator or manager of a bulk pesticide storage facility shall notify the department or the division of emergency and disaster services within 3 hours after a spill of more than 25 gallons of liquid or 500 pounds of dry pesticides outside the secondary containment area.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

CHAPTER 12:56:14 BULK DISTRIBUTION OF PESTICIDES

Sec.

12:56:14:01.	Bulk delivery system.
12:56:14:01.01.	Bulk dispensing system.
12:56:14:02.	Labeling.
12:56:14:03.	Distribution of bulk pesticide. N
12:56:14:04.	Notification for delivery of bulk pesticide.
12:56:14:05.	Bulk repackaging.

12:56:14:01. Bulk delivery system

Scales or meters used for repackaging sales from permanent and nonpermanent bulk pesticide storage containers must be certified by the department of commerce and regulation to meet the specifications, tolerances, and other technical requirements for weighing and measuring devices as specified in § 20:01:02:01.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-20A-36, 38-21-1 5, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-1 5.

12:56:14:01.01. Bulk dispensing system

All bulk pesticide dispensing requires separate distribution systems, such as hosing and piping, for each bulk pesticide. Such distribution systems shall be constructed of materials and in a manner compatible with the physical and chemical properties of the pesticide being stored.

Source:

13 SDR 37, effective October 8, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:14:02. Labeling

A registered product label shall be affixed prominently to all bulk pesticide storage containers in the proximity of the outlet. All bulk pesticides used for custom mixing, tank mixing, or repackaging must be registered and labeled in accordance with the Act and SDCL 38-20A.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:14:03. Distribution of bulk pesticide

Repealed.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128. 12 SDR 154, effective July 1, 1986; 13 SDR 183, repealed June 7, 1987.

12:56:14:04. Notification for delivery of bulk pesticide

A person may not deliver pesticides for bulk repackaging without notifying the department prior to the initial bulk shipment to any establishment. The notification shall be made annually by the manufacturer or registrant on forms provided by the secretary, and shall include the following:

- (1) The name and address of each establishment receiving such a delivery;
- (2) A certificate of authorization from the registrant to repackage the pesticides including permission to utilize registered product labels on bulk containers; and
- (3) The EPA registration number of each pesticide to be repackaged.

Information obtained by the department pursuant to this section shall not be disclosed without written permission of the manufacturer or registrant.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:14:05. Bulk repackaging

Bulk repackaging for distribution must meet the following requirements:

- (1) The establishment receiving the transfer or delivery of the bulk pesticide must be in compliance with Section 7 of the Act (registration of pesticide-producing establishments);
- (2) A representative of the receiving establishment must be present both when the product is received and when it is repackaged for sale;
- (3) There is no change in the following:
 - (a) Pesticide formulation;
 - (b) Product labeling, except for the addition of the assigned EPA establishment number of the repackaging site and the net contents statement; and
 - (c) Identity of the manufacturer or registrant accountable for the integrity of the product, as evidenced by the assigned EPA product registration number;
- (4) A written letter of authorization for bulk repackaging from the registrant must be on file at each repackaging establishment; and

(5) Containers and accessory equipment used for the storage and handling of bulk pesticides must be of materials and construction compatible with the pesticide stored and the conditions of storage as specified by label instructions.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 183, effective June 7, 1987.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

**CHAPTER 12:56:15
HANDLING AND LOADING**

Sec.

12:56:15:01.	Handling and loading.
12:56:15:02.	Cleansing of bulk pesticide storage containers.
12:56:15:03.	Handling and loading spills.

12:56:15:01. Handling and loading

Bulk pesticides shall be handled and loaded in a manner that will prevent spillage or discharge of pesticides.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:15:02. Cleansing of bulk pesticide storage containers

Bulk storage containers which contain bulk pesticide must be thoroughly cleaned according to the manufacturer's specifications before refilling, unless a sealed or dedicated reusable bulk container is refilled with a pesticide product bearing the same label.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

12:56:15:03. Handling and loading spills

Minor spills of pesticide or rinsate which have occurred from the handling, loading, or cleansing of bulk containers and which accumulate in the secondary containment area shall be disposed of as provided by the pesticide label. If the spillage is contaminated or unfit for reuse or disposal according to label directions, the operator shall comply with the disposal procedures in chapter 12:56:02.

Source:

12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

General Authority:

SDCL 38-20A-36, 38-21-15, 38-21-51.

Law Implemented:

SDCL 38-20A-36, 38-21-15.

**CHAPTER 12:56:16
PRIVATE APPLICATOR RECORDS FOR LIVESTOCK PROTECTION
COLLARS**

Sec.

- | | |
|--------------|---|
| 12:56:16:01. | Livestock protection collar records required. |
| 12:56:16:02. | Availability of records to the department. |
| 12:56:16:03. | Records to be kept for three years. |

12:56:16:01. Livestock protection collar records required

Each private applicator of livestock protection collars shall keep records which include the following for each application:

- (1) The number of collars placed on livestock;
- (2) The date of application; and
- (3) The location of collared animals.

In addition, applicators shall record the number of collars purchased or leased, the number of collars punctured or ruptured including apparent cause, the number of collars lost or unrecovered, the number of collars in storage, and the species, date, and location of each animal found poisoned as a result of the use of the livestock protection collar. Each accident or injury to humans or domestic animals or poisoning of nontarget species shall be reported immediately to the department of agriculture.

Source:

17 SDR 116, effective February 14, 1991.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-51.

12:56:16:02. Availability of records to the department

Each applicator shall have all pesticide application records on the use of livestock protection collars completed and available to the department for inspection at the close of each day.

Source:

17 SDR 116, effective February 14, 1991.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-51.

12:56:16:03. Records to be kept for three years

Records containing the information required by § 12:56:16:01 shall be kept by the applicator for three years from the date of application or until return of the livestock protection collar to the livestock protection collar pool manager, whichever is later. The applicator shall furnish the department with a copy of these records upon written request.

Source:

17 SDR 116, effective February 14, 1991.

General Authority:

SDCL 38-21-51.

Law Implemented:

SDCL 38-21-51.

**CHAPTER 12:56:17
OPERATIONAL AREA CONTAINMENT**

Sec.

- 12:56:17:01. Operational area containment required.
- 12:56:17:02. Operational area containment requirements.
- 12:56:17:03. Pesticide handling and discharge response procedures and plans.
- 12:56:17:04. Training to be provided to employees.
- 12:56:17:05. Recovery, storage, and use of discharges.
- 12:56:17:06. Reporting of pesticide spills.
- 12:56:17:07. Pesticide operational area registration.
- 12:56:17:08. Prior approval required of plans and specifications for pesticide operational areas - Dual approval if fertilizer containment requirements met.
- 12:56:17:09. Contents of pesticide operational area containment registration application.
- 12:56:17:10. Connections to potable water supply.

12:56:17:01. Operational area containment required

After February 1, 1995, operational area containment is required of any person when the persons operational area meets any one or more of the following conditions:

- (1) The operational area is the applicator's principal operational area and
 - (a) More than a total of 1,500 pounds of pesticide active ingredients are transferred, loaded, unloaded, mixed, repackaged, or refilled during a calendar year; or
 - (b) Either concentrate or diluted pesticides are cleaned, washed, or rinsed from containers or from application, handling, storage, or transportation equipment for over 30 days accumulated during a calendar year;
- (2) The operational area is within
 - (a) 150 feet of a lake, stream, streambed, or wetland~
 - (b) 150 feet of a well;
 - (c) 200 feet of populated buildings, either commercial or residential premises, excluding the owner or operator's own residential or commercial buildings; or
 - (d) 500 feet of a well used as a public water supply.

Two or more operational areas under common ownership and control within one-half mile of each other are calculated collectively to determine if the thresholds listed in subdivision (1) (a) or (1)(b) of this section have been reached.

Subdivisions (2)(c) and (2)(d) of this section do not apply to mixing and loading operations conducted by pesticide applicators utilizing containers and equipment with holding capacities of 10 U.S. gallons or less or 50 pounds net dry weight or less.

Except for pressure wood preserving operational areas, subdivisions (1)(a) and (l)(b) of this section do not apply to those operational areas located within or immediately adjacent to each pesticide application site.

Source:

18 SDR 49, effective September 15, 199U 20 SDR 91, effective December 19, 1993.

General Authority:

SDCL 38-21-1 5, 38-21-1 5.1, 38-21-51.

Law Implemented:

SDCL 38-21-15, 38-21-15.1.

12:56:17:02. Operational area containment requirements

After February 1, 1995, the following requirements for containment apply to those operational areas where operational area containment is required pursuant to § 12:56:17:01:

- (1) Operational area activities must be carried out in a manner that prevents escape of discharges that may result in unreasonable adverse effects on the environment;
- (2) Operational area activities must be carried out on an impervious surface that is designed to catch and contain any discharges in the operational area;
- (3) The operational area containment must be constructed in accordance with professional engineering practices which include the following:
 - (a) The material used must be of sufficient thickness and strength to withstand the weight and movement of any equipment that may be placed or parked within the operational area containment;
 - (b) All seams and cracks must be sealed;
 - (c) The operational area containment must be constructed of concrete or other materials approved by the secretary prior to construction or installation. If materials other than concrete are used, information must be provided by the applicant to the secretary which includes chemical compatibility, permeability, and physical characteristics of materials proposed to assure operational area containment integrity under conditions of proposed

use. A written confirmation of compatibility of synthetic materials must be kept at the operational area or at the nearest local office of the operator;

(d) For liquid pesticides, including container and equipment rinsates, the operational area containment must be curbed or sloped to contain discharges so as to facilitate recovery of discharged materials and to prevent liquids from adjacent surfaces from flowing onto the operational area containment. To prevent unreasonable adverse effects on the environment as defined in SDCL chapter 38-2 1, the operational area containment must be of sufficient capacity and surface area to contain discharges from the single largest container or application system operated or cleaned within the operational area and to prevent spillage onto unprotected areas. A minimum containment capacity of 250 U.S. gallons must be provided;

(e) For nonliquid pesticides, the operational area containment must extend beneath any conveyors or augers used in operational area activities unless the conveyors or augers are fully enclosed and constructed to prevent discharge. To prevent unreasonable adverse effects on the environment as defined in SDCL chapter 38-21, the operational area containment must be of adequate surface area to contain discharges from the largest container or equipment operated within the operational area containment. The operational area containment must be constructed to prevent liquids from adjacent surfaces from flowing onto the operational area containment;

(4) Discharges and other accumulated materials must be promptly recovered from the operational area containment. Accumulated liquids or materials containing pesticides must be disposed of in accordance with chapter 12:56:02. Accumulations of precipitation may be discharged from the operational area containment as surface runoff if the operational area containment was cleaned after the last use.

Source:

18 SDR 49, effective September 15, 1991; 20 SDR 91, effective December 19, 1993.

General Authority:

SDCL 38-21-15, 38-21-15.1, 38-21-51.

Law Implemented:

SDCL 38-21-1 5, 38-21-1 5.1.

12:56:17:03. Pesticide handling and discharge response procedures and plans

All applicators who conduct operational area activities must utilize procedures to minimize and mitigate the adverse effects of discharges on the environment. By February 1, 1995, all private and commercial applicators must conduct operational area activities utilizing a written pesticide handling and discharge response plan. The plan must be kept current at all times and available for use. A copy of the plan must be available for inspection by the department at either the operational area or the applicator's nearest local office or the location from which the operational area is administered. The written plan must contain the following information:

- (1) Methods and procedures to be used for the transfer, loading, unloading, mixing, repackaging, and refilling of pesticide containers and pesticide application equipment;
- (2) Methods and procedures to be used for the periodic inspection of appurtenances used to transfer or hold pesticides and for the repair of any equipment found to be defective;
- (3) Methods and procedures to be used for the rinsing, washing, and cleaning of pesticide containers and application, storage, or transportation equipment;
- (4) Methods and procedures to be used in the transfer, handling, storage, and disposal of materials recovered from within operational area containment, if required;
- (5) Methods, procedures, materials, and equipment to be used to contain, recover, store, transport, and dispose of discharges outside of operational area containment systems: and
- (6) The identity and telephone numbers of responsible persons and agencies who are to be contacted if a discharge occurs.

Pesticide handling and discharge response plans written to comply with another law, rule, or ordinance may be used to comply with all or part of the requirements in this section.

Source:

18 SDR 49, effective September 15, 1991; 20 SDR 91, effective December 19, 1993.

General Authority:

SDCL 38-21-15, 38-21-15.1, 38-21-51.

Law Implemented:

SDCL 38-21-15, 38-21-15.1.

12:56:17:04. Training to be provided to employees

Effective February 1, 1995, all private and commercial applicators who own or operate an operational area must conduct pesticide handling and discharge response plan training for all new and existing employees involved in the use and handling of pesticides. Training must be conducted at least annually. Employees involved in pesticide use and handling must receive training no later than three days after beginning pesticide use and handling duties. The owner or operator and employees are responsible for following the firm's pesticide handling and discharge response plan to minimize contamination of the environment.

Source:

18 SDR 49, effective September 15, 1991; 20 SDR 91, effective December 19, 1993.

General Authority:

SDCL 38-21-15, 38-21-15.1, 38-21-51.

Law Implemented:

SDCL 38-21-1 5, 38-21-1 5.1.

12:56:17:05. Recovery, storage, and use of discharges

All discharges within and outside of operational area containment shall be immediately recovered using absorbent materials, pumps, or similar means. Operational area containment surfaces exposed to concentrated and diluted pesticides shall be periodically cleaned and all rinsates shall be recovered and stored in accordance with SDCL chapter 38-21 and article 12:56. Recovered discharges shall not be stored below ground. Containers larger than 300 U.S. gallons that contain recovered discharges or rinsates not regulated by chapter 12:56:13 for more than 14 consecutive days must be located within secondary containment constructed and maintained in accordance with the construction and capacity requirements of chapter 12:56:13. Recovered discharges may be used in accordance with the applicable pesticide product labels.

Upon recovery of discharges outside of operational area containment that are in excess of the quantities listed in § 12:56:17:06, samples shall be taken and analyzed for applicable pesticide residues by the person responsible for the discharge. Samples taken must be from the area where the discharge occurred and from where recovery was completed. These samples must be taken at a sufficient depth and from a sufficient surface area to show that the recovery was complete.

The owner or operator of the operational area shall provide written documentation to the department describing the cause of the discharge, recovery and sampling procedures, analysis reports, and disposition of the recovered materials within 30 days following the date the discharge occurred.

Source:

18 SDR 49, effective September 15, 1991.

General Authority:

SDCL 38-21-15, 38-21-15.1, 38-21-51.

Law Implemented:

SDCL 38-21-15, 38-21-15.1.

12:56:17:06. Reporting of pesticide spills

Pesticide discharges in excess of 25 pounds active ingredients that occur at operational areas outside of operational area containment must be reported to the department.

Source:

18 SDR 49, effective September 15, 1991.

General Authority:

SDCL 38-21-15, 38-21-16, 38-21-51.

Law Implemented:

SDCL 38-21-16.

12:56:17:07. Pesticide operational area registration

Effective February 1, 1995, each pesticide operational area using operational area containment as required by § 12:56:17:01 must be registered with the department. The secretary may deny registration or require additional conditions for the registration of any operational area if the registrant's application does not meet the requirements of each provision of this chapter.

If departmental investigation determines the facility is not constructed or operating in accordance with the submitted plans and specifications or the requirements of this chapter, the owner must correct any deficiencies as set forth by the department. The secretary may modify, suspend, or revoke the registration of any operational area that has not complied with this chapter.

Source:

18 SDR 49, effective September 15, 1991; 20 SDR 91, effective December 19, 1993.

General Authority:

SDCL 38-21-1 5.1, 38-21-51.

Law Implemented:

SDCL 38-21-15.1.

12:56:17:08. Prior approval required of plans and specifications for pesticide operational areas - Dual approval if fertilizer containment requirements met

Plans and specifications for pesticide operational areas required to be registered pursuant to this chapter must be submitted to the secretary for review and approval at least 60 days before construction begins. Installation and operation must be in accordance with approved plans and specifications.

Any person may submit pesticide operational area containment plans and specifications prior to February 1, 1995, and the department shall review such plans for compliance with this chapter. If the pesticide operational area containment plans are technically sound and comply with the rules pertaining to fertilizer in article 12:44 and the rules contained in this chapter, the department shall provide approval for construction or registration under both the pesticide and fertilizer containment requirements.

Source:

18 SDR 49, effective September 15, 1991; 20 SDR 91, effective December 19, 1993.

General Authority:

SDCL 38-21-15, 38-21-15.1, 38-21-51.

Law Implemented:

SDCL 38-21-15.1, 38-21-15.3.

12:56:17:09. Contents of pesticide operational area containment registration application

An application for a pesticide operational area containment registration shall include the following:

- (1) The name, address, and telephone number of the following:
 - (a) The person applying for registration;
 - (b) The person who will operate the area; and
 - (c) The person who will construct, install, or modify the site;
- (2) The type of operational area containment, new or existing and stationary or portable;
- (3) The county, city, and township where the operational area is located;
- (4) The legal description of the operational area, including range, township, section, quarter, quarter, quarter, and quarter;
- (5) The size of the lot owned or leased;
- (6) The nature of the terrain, such as level area, steep slope;
- (7) The type of containers, such as steel, poly. or wood, and the size of containers to be transferred at the operational area;
- (8) The type of back siphon prevention equipment to be used;
- (9) Copies of required local permits;
- (10) The general soil type at the operational area, such as clay, gravel, sand, or loam, and the type, depth, proximity, and legal description of wells and aquifers within 1,000 feet of the operational area;
- (11) The approximate distance to and identity of any surface water, such as lake, stream, drainage ditch, or storm drain, within one-half mile into which liquid could flow;
- (12) Two scale drawings of plans and specifications for the operational area containment;

(13) Two copies of the plumbing diagram for the facility showing the location and type of appurtenances used to control all operational area operations;

(14) If synthetic materials are used, a copy of the manufacturer's letter describing the material's compatibility with pesticides;

(15) The signature, the date of signature, and the title of the person certifying information on the application; and

(16) The date of review by the secretary or the secretary's agent.

Source:

18 SDR 49, effective September 15, 1991.

General Authority:

SDCL 38-21-15, 38-21-15.1, 38-21-51.

Law Implemented:

SDCL 38-21-1 5.1, 38-21-15.3.

12:56:17:10. Connections to potable water supply

All pesticide operational areas shall implement procedures to prevent backflow incidents from contaminating potable water supplies. Potable water supply lines may not be connected to process water lines, chemical lines, or equipment unless backflow prevention is installed. Backflow prevention shall consist of one of the following:

(1) A reduced-pressure principle device which meets the American Water Works Association Standard CS 11-89 (September 1, 1990) for backflow prevention devices; or

(2) Air gap separation. Air gap is a physical separation between the free flowing discharge end of a water pipeline and an open or nonpressurized receiving vessel. To have an acceptable air gap, the end of the discharge pipe must be located a distance of at least twice the diameter of the pipe above the topmost rim of the receiving vessel.

Source:

18 SDR 49, effective September 15, 1991.

General Authority:

SDCL 38-21-15, 38-21-15.1, 38-21-51.

Law Implemented:

SDCL 38-21-15.

References:

AWWA Standard for "Reduced-Pressure Principle Backflow-Prevention Assembly," American Water Works Association, effective September 1, 1990. Copies may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235; \$12 per copy plus \$2.95 shipping and handling.

**CHAPTER 12:56:18
PESTICIDE RECYCLING AND DISPOSAL**

Sec.

12:56:18:01.	Pesticide recycling and disposal fee.
12:56:18:02.	Containers acceptable for recycling.
12:56:18:03.	Pesticides acceptable for collection.
12:56:18:04.	Criteria for container collection and recycling activities.

12:56:18:01. Pesticide recycling and disposal fee

Repealed.

Source:

19 SDR 61, effective October 26, 1992; repealed, 22 SDR 166, effective June 6, 1996.

12:56:18:02. Containers acceptable for recycling

Pesticide containers acceptable for recycling must meet the following minimum requirements

- (1) Be triple-rinsed or equivalent;
- (2) Consist of high density polyethylene (HDPE) plastic of 2 1/2 gallons capacity or less;
- (3) Contain no visible pesticide residue inside or outside of the container; however, if the container held crop oil, a nutritional spray, an adjuvant or surfactant, or a *Bacillus thuringensis* product as the sole active ingredient, the presence of residue will not disqualify it for acceptance;
- (4) Contain no more than 0.5 fluid ounces of clear water; and
- (5) When possible, be delivered with labels on the container.

Source:

19 SDR 114, effective February 11, 1993; 19 SDR 198, effective July 1, 1993.

General Authority:

SDCL 38-20A-36, 38-20A-54.

Law Implemented:

SDCL 38-20A-54, 38-20A-55.

12:56:18:03. Pesticides acceptable for collection

To be eligible for collection, pesticides must be preregistered on a form provided by the secretary. From these preregistrations, the secretary shall compile a prioritized list of eligible waste pesticides and participants based on the toxicity of the pesticide, condition of the container, and the potential for the pesticide to harm human health or the environment. Pesticides that exhibit the greatest risks shall receive the highest ranking. Those waste pesticides that rank highest on the list shall receive priority for collection, within the constraints of program funding. Regardless of the priority list, the secretary may refuse to collect and dispose of any pesticide based on any one or more of the following factors:

- (1) Physical or financial constraints;
- (2) Misrepresentation in preregistration;
- (3) Newly discovered facts regarding the toxicity, condition, or potential effect of the pesticide on the environment; and
- (4) Differences between the original pesticide as sold or produced and the present condition of the pesticide.

The secretary shall notify the applicant of the eligibility of the pesticides for disposal under the program at least 15 days before the date of collection. If the pesticides are eligible for disposal, the secretary shall specify in the notice where and when the pesticides will need to be delivered.

Waste pesticides considered eligible but not collected because of inadequate program funding shall remain on the list for consideration in the next annual cycle of collections and do not require submission of another application for preregistration.

Source:

19 SDR 114, effective February 11, 1993; 19 SDR 198, effective July 1, 1993.

General Authority:

SDCL 38-20A-36, 38-20A-54.

Law Implemented:

SDCL 38-20A-54, 38-20A-55.

12:56:18:04. Criteria for container collection and recycling activities

Pesticide collection and container recycling activities must be conducted in accordance with the following minimum criteria:

(1) The site for collection must be selected based on the following criteria:

- (a) Security;
- (b) Distance to water sources, residences, and institutions;
- (c) Geographic distribution of collection sites within the state;
- (d) Potential number of containers and amount of pesticides to be collected in a given area;
- (e) Availability of volunteers to assist with collection; and
- (f) Accessibility of the site to the public;

(2) The collection site where containers and pesticides are inspected and processed must be protected by an impervious containment area;

(3) Individual volunteers participating and assisting in collection must be at least 18 years of age and receive training in safety, proper inspection and handling of containers and pesticides, and any other applicable aspects of collection;

(4) The secretary or a designee shall oversee the collection of pesticide containers and waste pesticides at each collection site. Individual volunteers shall follow the direction and supervision of the secretary or a designee;

(5) Participants bringing containers or pesticides to a collection event may be required to complete a survey.

Source:

19 SDR 114, effective February 11, 1993.

General Authority:

SDCL 38-20A-36, 38-20A-54.

Law Implemented:

SDCL 38-20A-54, 38-20A-55.