

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 217

HOUSE BILL NO. 1403

(Representative Stenehjem)

(Senators W. Stenehjem, B. Stenehjem)

CONTROLLED SUBSTANCES

AN ACT to amend and reenact subsection 4 of section 19-03.1-01, section 19-03.1-01.1, subsection 5 of section 19-03.1-05, subsection 14 of section 43-15-10, and subsection 4 of section 54-12-14 of the North Dakota Century Code, relating to the controlled substances board and the state board of pharmacy and schedule I controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 19-03.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Board" means the ~~North Dakota controlled substances state board of pharmacy.~~

¹¹² **SECTION 2. AMENDMENT.** Section 19-03.1-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01.1. ~~Controlled substances board~~ Board - Agreements - Gifts - Expenses.

1. ~~There is hereby established a North Dakota controlled substances board consisting of the attorney general or the attorney general's designee, the director of the forensic sciences division of the state department of health and consolidated laboratories or the director's designee, the chairperson of the state board of medical examiners or the chairperson's designee, a member appointed by the governor, and the executive secretary of the state board of pharmacy or the executive secretary's designee. The executive secretary of the state board of pharmacy, or the executive secretary's designee, must be the chairperson of the board.~~
2. In carrying out its duties under this chapter, the board shall consult with representatives of each of the following interests: board of medical examiners, board of dental examiners, board of registry in podiatry,

¹¹² Section 19-03.1-01.1 was also amended by section 2 of House Bill No. 1058, chapter 243.

board of veterinary medical examiners, board of nursing, the college of pharmacy, and the school of medicine.

- ~~3~~ 2. To carry out its duties under this chapter, the board may enter into agreements or memorandums of understanding with the interests named in subsection ~~2~~ 1. Additionally, the board may contract for and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources. The income received from these sources must be spent for the purpose designated in the gift, grant, or donation.
- ~~4~~. ~~Members of the board may not receive any compensation for their service on the board; but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided for state employees.~~

SECTION 3. AMENDMENT. Subsection 5 of section 19-03.1-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):
- a. Alpha-ethyltryptamine, its optical isomers, salts and salts of isomers (also known as etryptamine; α -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
 - b. 4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy- α -methylphenethylamine; 4-bromo-2, 5-DMA).
 - c. 4-bromo-2, 5-dimethoxyphenethylamine (also known as 4-bromo-2, 5-DMPEA).
 - d. 2, 5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy- α -methylphenethylamine; 2, 5-DMA).
 - ~~e~~ e. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
 - ~~e~~ f. 4-methoxyamphetamine (also known as 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine; PMA).
 - ~~f~~ g. 5-methoxy-3,4-methylenedioxy-amphetamine.
 - ~~g~~ h. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM" and "STP").
 - ~~h~~ i. 3,4-methylenedioxy amphetamine.
 - ~~i~~ j. 3,4-methylenedioxymethamphetamine (also known as MDMA).

- † k. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA).
- † l. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
- † m. 3,4,5-trimethoxy amphetamine.
- † n. Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
- † o. Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).
- † p. Dimethyltryptamine (also known as DMT).
- † q. Hashish.
- † r. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).
- † s. Lysergic acid diethylamide.
- † t. Marijuana.
- † u. Mescaline.
- † v. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
- † w. Peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts).
- † x. N-ethyl-3-piperidyl benzilate.
- † y. N-methyl-3-piperidyl benzilate.
- † z. Psilocybin.
- † aa. Psilocyn.
- † bb. Tetrahydrocannabinols (synthetic) equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
- (1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.

- (2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.
- (3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- ~~bb.~~ cc. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).
- ~~ee.~~ dd. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).
- ~~dd.~~ ee. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl)cyclohexyl] piperidine; 2-Thienyl analog of phencyclidine; TCP, TCP).
- ~~ee.~~ ff. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).

¹¹³ SECTION 4. AMENDMENT. Subsection 14 of section 43-15-10 of the North Dakota Century Code is amended and reenacted as follows:

14. To ~~make~~, adopt, amend, and repeal rules ~~as may be deemed~~ determined necessary by the board ~~from time to time~~ for the proper administration and enforcement of this chapter, chapter 19-02.1 as that chapter pertains to drugs, subject to approval of the director of the state department of health and consolidated laboratories, and chapter 19-03.1; ~~subject to approval of the controlled substances board.~~

SECTION 5. AMENDMENT. Subsection 4 of section 54-12-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state ~~controlled substances board~~ of pharmacy or a law enforcement agency.

Approved March 6, 1995
Filed March 6, 1995

¹¹³ Section 43-15-10 was also amended by section 2 of Senate Bill No. 2163, chapter 405, and section 2 of House Bill No. 1058, chapter 243.

CHAPTER 218**SENATE BILL NO. 2278**

(Senators Traynor, Krebsbach)
(Representatives Kunkel, Nicholas)

**CONTROLLED SUBSTANCE USE BY PERSONS IN
INTRACTABLE PAIN**

AN ACT to provide for the care and treatment of persons with intractable pain by the use of controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Board" means the state board of medical examiners.
2. "Intractable pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts.
3. "Physician" means a physician licensed by the board.

SECTION 2. Prescription or administration of drugs by physician. Notwithstanding any other provision of law, a physician may prescribe or administer controlled substances to a patient in the course of the physician's treatment of the patient for intractable pain. A physician shall keep records of purchases and disposals of controlled substances prescribed or administered under this section. The records must include the date of purchase, the date of sale or administration by the physician, the name and address of the patient, and the reason for the prescribing or the administering of the substances to the patient.

SECTION 3. Restriction by hospital or health care facility of prescribed drug use prohibited. No hospital or health care facility may forbid or restrict the use of controlled substances when prescribed or administered by a physician having staff privileges at that hospital or health care facility for a patient diagnosed and treated by a physician for intractable pain.

SECTION 4. Disciplinary action for prescribing or administering drug treatment prohibited. The board may not discipline a physician for prescribing or administering controlled substances in the course of treatment of a patient for intractable pain under this Act.

SECTION 5. Application. This Act does not apply to a person being treated by a physician for chemical dependency because of the person's use of controlled substances. This Act does not authorize a physician to prescribe or administer controlled substances to a person the physician knows is using controlled substances for nontherapeutic purposes. A person to whom controlled substances are prescribed or administered for intractable pain is not exempt from section 39-08-01 or 39-20-04.1.

SECTION 6. Cancellation, revocation, or suspension of physician's license.

This Act does not limit the authority of the board to cancel, revoke, or suspend the license of any physician who:

1. Prescribes or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.
2. Fails to keep complete and accurate records of purchases and disposals of controlled substances listed in chapter 19-03.1.
3. Writes false or fictitious prescriptions for controlled substances scheduled in chapter 19-03.1.

Approved March 24, 1995

Filed March 27, 1995

CHAPTER 219

SENATE BILL NO. 2075

(Legislative Council)
 (Interim Natural Resources Committee)
 (Senator Urlacher)
 (Representatives Brown, Hanson, Guleson)

CHEMICAL AND FEED LAW ADMINISTRATION

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to the consolidated laboratories function of the state department of health and consolidated laboratories; to amend and reenact section 19-13.1-01, subsections 2 and 12 of section 19-13.1-02, sections 19-13.1-03, 19-13.1-06, subsections 5 and 6 of section 19-13.1-07, subsection 4 of section 19-13.1-08, sections 19-13.1-09, 19-13.1-10, 19-13.1-11, 19-13.1-12, 19-13.1-13, 19-13.1-14, 19-14-02, subsections 3 and 4 of section 19-14-03, sections 19-14-04, 19-14-05, 19-14-06, 19-14-07, 19-18-02, 19-18-02.2, subsections 1 and 3 of section 19-18-03, sections 19-18-04, 19-18-04.1, subsections 2 and 3 of section 19-18-04.2, sections 19-18-05, 19-18-06, 19-18-06.1, subsections 1 and 3 of section 19-18-07, sections 19-18-08, 19-18-10, 19-18-11, 19-20.1-01, subsections 6, 13, and 17 of section 19-20.1-02, sections 19-20.1-03, 19-20.1-03.1, 19-20.1-03.2, 19-20.1-03.3, 19-20.1-03.4, subsections 1 and 4 of section 19-20.1-04, sections 19-20.1-06, 19-20.1-07, 19-20.1-08, 19-20.1-10, 19-20.1-11, 19-20.1-12, subsections 3 and 4 of section 19-20.1-13, sections 19-20.1-14, 19-20.1-15, 19-20.1-16, and 19-20.1-17 of the North Dakota Century Code, relating to transferring administration of commercial feed, livestock medicine, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws from the state department of health and consolidated laboratories to the commissioner of agriculture; and to repeal section 19-18-01 of the North Dakota Century Code, relating to the short title of the Insecticide, Fungicide, and Rodenticide Act of 1947.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁴ **SECTION 1. AMENDMENT.** Section 19-13.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-01. Enforcing official. This chapter must be administered by the ~~state department of health and consolidated laboratories~~ commissioner of agriculture, hereinafter referred to as the ~~department~~ commissioner.

SECTION 2. AMENDMENT. Subsections 2 and 12 of section 19-13.1-02 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds when not adulterated within the

¹¹⁴ Section 19-13.1-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

meaning of section 19-13.1-07, which are distributed for use as feed or for mixing in feed. The department commissioner, by rule, may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 19-13.1-07.

12. "Official sample" means any sample of feed taken by the department commissioner and designated as "official" by the department commissioner.

¹¹⁵ SECTION 3. AMENDMENT. Section 19-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-03. Registration and license.

1. Each pet food and specialty pet food must be registered before being distributed in this state. The application for registration must be submitted on forms furnished by the department commissioner. The application must be accompanied by a label and any other printed matter describing each product and the registration fee of twenty-five dollars per product. Upon approval by the department commissioner, a certificate of registration must be furnished to the applicant. Registrations are not transferable. All registrations expire on December thirty-first of each year. Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product.
2. A distributor is not required to register any brand of pet food or specialty pet food that is already registered under this chapter by another person.
3. Each person who manufactures commercial feed or whose name appears on the label of a commercial feed, other than pet food or specialty pet food, shall obtain a feed manufacturer's license from the department commissioner. Each person who sells commercial feed, other than pet food or specialty pet food, at retail, shall obtain a feed retailer's license from the department commissioner. The license application must be on forms furnished by the department commissioner and must be accompanied by a fee of fifty dollars for feed manufacturers or twenty-five dollars for feed retailers. If a manufacturer is also a retailer of feed, the retail license is waived. A feed retailer's license must be obtained for each location used by the retailer. All licenses expire on December thirty-first of each year. Licenses are not transferable. License renewal applications received after January thirty-first may be assessed a penalty fee of ten dollars for retailers and twenty dollars for manufacturers. This subsection does not apply to any person who custom manufactures feed only for another person at that person's request and for that person's own use.

¹¹⁵ Section 19-13.1-03 was also amended by section 1 of House Bill No. 1149, chapter 220.

4. Each feed manufacturer required to be licensed under this chapter shall submit and maintain a current label file of all the feeds distributed in the state with the department commissioner.
5. The department commissioner may refuse to register or license any product or applicant not in compliance with the provisions of this chapter and to cancel any registration or license subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration or license may be refused or canceled until the registrant or licensee has been given opportunity to be heard before the department commissioner and to amend the application in order to comply with the requirements of this chapter.

¹¹⁶ SECTION 4. AMENDMENT. Section 19-13.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-06. **Inspection fees.** There must be paid to the department commissioner for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain, and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the thirty-first day of January of each year, an annual statement under oath, setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding year; and upon filing such statement shall pay the inspection fee. When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee.
2. Keep such records as may be necessary or required by the department commissioner to indicate accurately the tonnage of commercial feed distributed in this state, and the department commissioner has the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

SECTION 5. AMENDMENT. Subsections 5 and 6 of section 19-13.1-07 of the North Dakota Century Code are amended and reenacted as follows:

5. If it contains viable weed seeds in amounts exceeding the limits which the department commissioner shall establish by rule.
6. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to

¹¹⁶ Section 19-13.1-06 was also amended by section 2 of House Bill No. 1149, chapter 220.

current good manufacturing practice rules adopted by the department commissioner to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess.

SECTION 6. AMENDMENT. Subsection 4 of section 19-13.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4. If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless ~~such the~~ commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rules of the department commissioner; in the adopting of ~~such the~~ rules the department commissioner shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.

SECTION 7. AMENDMENT. Section 19-13.1-09 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-09. Inspection, sampling, analysis.

1. For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the department commissioner, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized to enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and to inspect at reasonable times and within reasonable limits and in a reasonable manner, ~~such the~~ factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice rules established under subsection 6 of section 19-13.1-07.
2. A separate notice must be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be so notified.
3. If the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the officer or employee shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.
4. If the owner, or agent of the owner, of any factory, warehouse, or establishment described in subsection 1, refuses to admit the officer or agent to inspect in accordance with this section, the department

commissioner is authorized to obtain a warrant from any state court directing the owner or the owner's agent to submit the premises described in the warrant to inspection.

5. Any agent of the department commissioner is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds to enforce this chapter.
6. Sampling and analysis must be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.
7. The results of all analyses of official samples must be forwarded by the department commissioner to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the registrant may request a portion of the sample concerned within thirty days following receipt of the analysis.
8. In determining for administrative purposes whether a commercial feed is deficient in any component, the department commissioner must be guided by the official sample obtained and analyzed as provided for in this chapter.

SECTION 8. AMENDMENT. Section 19-13.1-10 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-10. Rules.

1. The department commissioner is charged with the enforcement of this chapter, and may adopt such reasonable rules as may be necessary to efficiently administer this chapter. When adopting any rules under the authority of this section, the department commissioner shall follow the procedures provided for in chapter 28-32. Publicity concerning the public hearing must be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.
2. The official definitions of feed ingredients and official feed terms adopted and published by the association of American feed control officials and any amendments or supplements thereto may be adopted by rule as the official definitions.

SECTION 9. AMENDMENT. Section 19-13.1-11 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-11. Detained commercial feeds. When the department commissioner has reasonable cause to believe any lot of commercial feed is being distributed in violation of ~~any of the provisions~~ of this chapter or of any of the prescribed regulations under this chapter, the department commissioner may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department commissioner or the court. The department commissioner shall release the lot of commercial feed so withdrawn when ~~said~~ the provisions and rules have been complied with. If compliance is not obtained within thirty days, the

~~department commissioner~~ may begin, or upon request of the distributor shall begin, proceedings for condemnation.

Any lot of commercial feed not in compliance with ~~said~~ the provisions and regulations is subject to seizure on complaint of the ~~department commissioner~~ to a court of competent jurisdiction in the area in which ~~said~~ the commercial feed is located. ~~In the event~~ If the court finds the ~~said~~ the commercial feed to be in violation of this chapter and orders the condemnation of ~~said~~ the commercial feed, it must be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance may the disposition of ~~said~~ the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of ~~said~~ the commercial feed or for permission to process or relabel ~~said~~ the commercial feed to bring it into compliance with this chapter.

¹¹⁷ SECTION 10. AMENDMENT. Section 19-13.1-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-12. Penalties.

1. Any person convicted of violating ~~any of the provisions of~~ this chapter or the rules issued thereunder or who ~~shall impede, obstruct, hinder impedes, obstructs, hinders, or otherwise prevent prevents or attempt attempts~~ to prevent the ~~department commissioner~~ from performing ~~its~~ the commissioner's duties in connection with the provisions of this chapter, ~~shall be is~~ guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the ~~director of the chemistry division of the department of health and consolidated laboratories~~ person performing the analysis, or the director's that person's authorized agent, ~~shall must~~ be accepted as prima facie evidence of the composition.
2. ~~Nothing in this~~ This chapter ~~may be construed as requiring does not require~~ the ~~department commissioner~~ to seek prosecution or the institution of seizure proceedings based on minor violations of the chapter when the ~~department commissioner~~ deems that the public interest will be best served by a suitable notice of warning in writing.
3. ~~It shall be the duty of each~~ Each state's attorney to whom any violation is reported ~~to shall~~ cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the ~~department commissioner~~ reports a violation for prosecution, an opportunity shall be given the distributor to present the distributor's view to the ~~department commissioner~~.
4. The ~~department is authorized to~~ commissioner may apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate ~~any of the provisions of~~ this chapter or any rule ~~promulgated~~ adopted under the chapter

¹¹⁷ Section 19-13.1-12 was also amended by section 2 of House Bill No. 1058, chapter 243.

notwithstanding the existence of other remedies at law. ~~Said~~ The injunction to be issued without bond.

5. Any person adversely affected by an act, order, or ruling made pursuant to ~~the provisions of~~ this chapter may within forty-five days thereafter bring action in the district court for Burleigh County for new trial of the issues bearing upon such act, order, or ruling, and upon such trial the court may issue and enforce such orders, judgments, or decrees as the court may deem proper, just, and equitable.

SECTION 11. AMENDMENT. Section 19-13.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-13. **Publications.** The ~~department~~ commissioner may publish, in such forms as ~~it the commissioner may deem~~ determine proper, information concerning the sales of commercial feeds, together with such data on their production and use as ~~it the commissioner may consider~~ advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state. However, the information concerning production and use of commercial feeds ~~shall~~ may not disclose the operations of any person.

SECTION 12. AMENDMENT. Section 19-13.1-14 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-14. **Cooperation with other entities.** The ~~department~~ commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations to carry out ~~the purpose and provisions of~~ this chapter.

SECTION 13. AMENDMENT. Section 19-14-02 of the North Dakota Century Code is amended and reenacted as follows:

19-14-02. **Registration of livestock medicine.** The ~~department~~ commissioner of agriculture, upon the application of the manufacturer or distributor ~~thereof of~~ livestock medicine and the payment of the registration fee prescribed in section 19-14-04, shall register any livestock medicine ~~which that~~ which does not violate ~~any of the provisions of~~ this chapter. ~~Such~~ The registration expires on June thirtieth of each year unless it is canceled sooner because a change is made in the ingredients or formula of manufacture or in the name, brand, or trademark under which the medicine is sold. In the event of any ~~such~~ such change, ~~such~~ the medicine must be registered anew in the same manner as upon an original application.

¹¹⁸ **SECTION 14. AMENDMENT.** Subsections 3 and 4 of section 19-14-03 of the North Dakota Century Code are amended and reenacted as follows:

3. Which has not been registered by the ~~department~~ commissioner of agriculture for sale in this state. The certificate of registration must include a disclosure of the name and quantity or proportion of each active ingredient, and the names of the inert ingredients or fillers.

¹¹⁸ Section 19-14-03 was also amended by section 11 of Senate Bill No. 2070, chapter 54.

4. Which does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
 - a. The common name in English of all active ingredients in the order of their predominance in the product;
 - b. A statement of the actual percentage or relative amounts of each ingredient active and inert. In the case of certain products (such as coated medicinal tablets), it may be impractical to state the quantity or proportion of inert ingredients and exemptions must be established by ~~regulations issued~~ rules adopted by the ~~food commissioner and chemist~~;
 - c. The net contents, by weight, measure, or numerical count of ~~such~~ the package;
 - d. The name and principal address of the manufacturer or person responsible for placing ~~such~~ the livestock medicine on the market; and
 - e. Complete and explicit directions for use of ~~such~~ the medicine.

SECTION 15. AMENDMENT. Section 19-14-04 of the North Dakota Century Code is amended and reenacted as follows:

19-14-04. Registration fee. Prior to each annual registration, a registration fee of ten dollars must be paid to the ~~department~~ commissioner of agriculture for each livestock medicine ~~which that~~ is registered.

SECTION 16. AMENDMENT. Section 19-14-05 of the North Dakota Century Code is amended and reenacted as follows:

19-14-05. Department Commissioner may cancel registration. The ~~department~~ commissioner of agriculture may cancel the registration of any livestock medicine ~~which that~~ is sold subsequent to its registration in violation of ~~any of the provisions~~ of this chapter. The ~~department~~ commissioner of agriculture may cancel ~~such the~~ the registration whenever a change is made in the ingredients or formula of the manufacture or in the name, brand, or trademark under which the medicine is sold, unless ~~such the~~ the medicine has been reregistered.

SECTION 17. AMENDMENT. Section 19-14-06 of the North Dakota Century Code is amended and reenacted as follows:

19-14-06. Department Commissioner may adopt rules and regulations, take testimony, grant public hearings. The ~~department~~ commissioner of agriculture may adopt rules ~~and regulations pursuant to chapter 28-32~~ governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter. ~~It~~ The commissioner of agriculture may take expert and other testimony whenever ~~it~~ the commissioner deems ~~such~~ the testimony advisable and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

SECTION 18. AMENDMENT. Section 19-14-07 of the North Dakota Century Code is amended and reenacted as follows:

19-14-07. **Enforcement of chapter.** The ~~department~~ commissioner of agriculture shall enforce ~~the provisions of~~ this chapter by inspection, chemical analysis, and any other appropriate method. All samples for analysis must be taken from stocks held within, or intended for sale in, this state. The ~~department commissioner of agriculture~~ may call upon any manufacturer or distributor applying for registration of a medicine to supply samples ~~thereof of the medicine~~ for analysis.

¹¹⁹ **SECTION 19. AMENDMENT.** Section 19-18-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-18-02. Definitions. For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Active ingredient" means:
 - a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient ~~which~~ that will prevent, destroy, repel, or mitigate pests.
 - b. In the case of a plant regulator, any ingredient ~~which~~ that, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.
 - c. In the case of a defoliant, any ingredient ~~which~~ that will cause the leaves or foliage to drop from a plant.
 - d. In the case of a desiccant, any ingredient ~~which~~ that will artificially accelerate the drying of plant tissue.
2. "Adulterated" applies to any pesticide if its strength or purity falls below the professed standard or quality as expressed on 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 constituent of the pesticide has been wholly or in part abstracted.
3. "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.
4. "Commissioner" means the commissioner of agriculture.
5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.
5. "~~Department~~" means the state department of health and consolidated laboratories.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

¹¹⁹ Section 19-18-02 was also amended by section 2 of House Bill No. 1058, chapter 243.

7. "Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating pests but does not including include equipment used for the application of pesticides when sold separately therefrom, or rodent traps.
8. "Environment" means air, water, land, and all plants and man and other animals living therein, and the interrelationships which that exist among these.
9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act.
10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals, and those on or in processed food, beverages, or pharmaceuticals.
11. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.
12. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
13. "Inert ingredient" means an ingredient which that is not an active ingredient.
14. "Ingredient statement" means:
 - a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or
 - b. A statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of the inert ingredients, if there be, in the pesticide, except subdivision a applies if the preparation is highly toxic to man, determined as provided in section 19-18-05, and in addition to subsections 1 and 2 of section 19-18-05. In case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.
15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.
16. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which that may be present in any environment whatsoever.

17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or any of its containers or wrappers.
18. "Labeling" means all labels and other written, printed, or graphic matter:
 - a. Upon the pesticide or device or any of its containers or wrappers;
 - b. Accompanying the pesticide or device at any time;
 - c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the environmental protection agency, the United States department of agriculture or interior, state agricultural experiment stations or centers, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of pesticides.
19. "Misbranded" applies:
 - a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
 - b. To any pesticide:
 - (1) If it is an imitation of or is offered for sale under the name of another pesticide;
 - (2) If its labeling bears any reference to registration under this chapter;
 - (3) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate to protect health and the environment;
 - (4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to protect health and the environment;
 - (5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package ~~which~~ that is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:
 - (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part ~~which~~ that is presented or displayed under customary conditions of purchase; and
 - (b) The ingredient statement appears prominently on another part of the immediate container, or outside

container or wrapper, permitted by the department commissioner;

- (6) The labeling does not contain a statement of the use classification under which the product is registered;
- (7) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:
 - (a) The name and address of the producer, registrant, or person for whom produced;
 - (b) The name, brand, or trademark under which the pesticide is sold;
 - (c) The net weight or measure of the content; and
 - (d) When required by regulation of the department commissioner to effectuate the purposes of this chapter, the registration number assigned to the pesticide under this chapter, and the use classification;
- (8) The pesticide 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:
 - (a) The skull and crossbones;
 - (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - (c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide;
- (9) If any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it ~~shall be~~ is injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying ~~such~~ the pesticide; or
- (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that the physical or physiological effect on plants or parts thereof may not be deemed injurious when this is the purpose for which

the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.

20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate nematodes.
21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural plants.
22. "Person" means any individual, partnership, association, corporation, limited liability company, or organized group of persons whether incorporated or not.
23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms except viruses, bacteria, or other micro-organisms on or in living man or other living animals.
24. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but does not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. The term "plant regulator" does not include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.
26. "Protect health and environment" means protection against any unreasonable adverse effects on the environment.
27. "Registrant" means the person registering any pesticide pursuant to ~~the provisions~~ of this chapter.
28. "Restricted use pesticides" means any pesticide ~~which~~ that the ~~department~~ commissioner has found and determined under the provisions of this chapter to be injurious to persons, beneficial insects, animals, crops, or to the environment other than the pests ~~it~~ the pesticide is intended to repel, destroy, control, or mitigate.
29. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal ~~which~~ that the ~~department shall declare~~ commissioner declares to be a pest.
30. "Snails or slugs" include all harmful agricultural mollusks.

31. "Unreasonable adverse effects on the environment" means 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.
32. "Weed" means any plant ~~which~~ that grows where not wanted.

SECTION 20. AMENDMENT. Section 19-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

19-18-02.2. Advisory board - Creation - Duties. The ~~state health officer~~ commissioner shall appoint and consult with a six-member advisory board regarding the testing and analyzing of North Dakota food and agricultural products for pesticide residue. The board must consist of a representative of a food processing company, a representative of the North Dakota agricultural experiment station, two representatives of North Dakota farm organizations, an individual representing agribusiness organizations, and a representative of the ~~commissioner of agriculture~~ state department of health and consolidated laboratories.

SECTION 21. AMENDMENT. Subsections 1 and 3 of section 19-18-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Any pesticide ~~which~~ that has not been registered pursuant to the provisions of section 19-18-04, 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 if the composition of a pesticide differs from its composition as represented in connection with its registration; provided, that in the discretion of the ~~department~~ commissioner, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.
3. The pesticide commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder pesticide ~~which~~ that the ~~department~~ commissioner, after investigation of and after public hearing on the necessity for ~~such~~ the action for the protection of the public health and the feasibility of ~~such~~ the coloration or discoloration, by regulation, ~~shall require~~ requires to be distinctly colored or discolored; unless it has been so colored or discolored. The ~~department~~ commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the ~~department~~ commissioner determines that ~~such~~ the coloring or discoloring for ~~such~~ the use or uses is not necessary for the protection of the public health.

¹²⁰ SECTION 22. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file annually with the department commissioner an application for registration of such the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product registered.
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by a registration fee of one hundred fifty dollars for each product registered. At the close of each calendar month, the department commissioner shall transmit to the state treasurer all moneys received for such the registrations. The state treasurer shall credit twenty-five dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet.

The department commissioner may require an applicant or registrant to provide 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. If the department commissioner finds that the application conforms to law, the department commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the department commissioner the application is denied, the product may not be offered for sale.

Each registration expires on the thirty-first of December following its issuance. A certificate of registration may not be issued for a term longer than one year, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January first of each year, or within the same month such the pesticides are first manufactured or sold within this state.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

SECTION 23. AMENDMENT. Section 19-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

¹²⁰ Section 19-18-04 was also amended by section 1 of House Bill No. 1147, chapter 221.

19-18-04.1. **Reporting requirements.** Upon request of the department commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The report must be filed by March first. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

SECTION 24. AMENDMENT. Subsections 2 and 3 of section 19-18-04.2 of the North Dakota Century Code are amended and reenacted as follows:

2. **Information revealed.** After consideration of the applicant's request submitted under subsection 1, the department commissioner may not make any information public which in the department's commissioner's judgment contains or relates to trade secrets or to commercial or financial information obtained from an applicant. When necessary, information relating to formulas of products may be revealed to any state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the department commissioner.
3. **Notification.** If the department commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure under this section, the department commissioner shall notify the applicant or registrant by certified mail. The department commissioner may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

SECTION 25. AMENDMENT. Section 19-18-05 of the North Dakota Century Code is amended and reenacted as follows:

19-18-05. **Determinations - Rules and regulations - Uniformity.** The department is authorized commissioner, after opportunity for a hearing, may:

1. ~~To declare~~ Declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances.
2. ~~To determine~~ Determine whether pesticides are highly toxic to man and whether the use thereof should be restricted.
3. ~~To determine~~ Determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of subsection 3 of section 19-18-03.

The department commissioner may adopt appropriate rules ~~and regulations~~ pursuant to ~~chapter 28-32~~ for carrying out the ~~provisions~~ of this chapter, including rules ~~and regulations~~ providing for the collection and examination of samples of pesticides or devices, and also may adopt such ~~regulations~~ rules, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States environmental protection agency with respect to pesticides in order that there may be uniformity between the requirements of the several states and the federal government.

SECTION 26. AMENDMENT. Section 19-18-06 of the North Dakota Century Code is amended and reenacted as follows:

19-18-06. Enforcement. The examination of pesticides or devices must be made under the direction of the department commissioner for the purpose of determining whether ~~they the pesticides or devices~~ comply with the requirements of this chapter. If it appears from ~~such the~~ examination that a pesticide or device fails to comply with the provisions of this chapter, and the department commissioner contemplates instituting criminal proceedings against any person, the department commissioner shall cause appropriate notice to be given to such person. Any person so notified must be given an opportunity to present their views, either orally or in writing, with regard to ~~such the~~ contemplated proceedings and if thereafter in the opinion of the department commissioner it appears that the provisions of the chapter ~~have has~~ been violated by such person, then the department commissioner shall refer the facts to the state's attorney for the county in which the violation has occurred with a copy of the results of the analysis or the examination of ~~such the~~ article. ~~Nothing in this This chapter may be construed as requiring does not require~~ the department commissioner to report for prosecution or for the institution of libel proceedings minor violations of the chapter whenever the department commissioner believes that the public interests will be best served by a suitable notice of warning in writing. Each state's attorney to whom any ~~such~~ violation is reported shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction without delay. The department commissioner, by publication in ~~such the manner as the department may prescribe commissioner prescribes~~, shall give notice of all judgments entered in actions instituted under the authority of this chapter.

SECTION 27. AMENDMENT. Section 19-18-06.1 of the North Dakota Century Code is amended and reenacted as follows:

19-18-06.1. "Stop-sale" orders. The department commissioner may issue and enforce a stop-sale order to the owner or custodian of any pesticide when the department commissioner finds that the product is being offered for sale in violation of the provisions of this chapter, and the order must direct that the product be held at a designated place until released in writing by the department commissioner. The owner or custodian of ~~such the~~ product has the right to petition a court of competent jurisdiction in the county where the product is found for an order releasing the product for sale in accordance with the findings of the court.

SECTION 28. AMENDMENT. Subsections 1 and 3 of section 19-18-07 of the North Dakota Century Code are amended and reenacted as follows:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if ~~such the~~ carrier, upon request, ~~shall permit permits~~ the department commissioner to copy all records showing the transactions in and movement of the articles.
3. The manufacturer or shipper of a pesticide for experimental use only:
 - a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
 - b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. If

a written permit has been obtained from the department commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

SECTION 29. AMENDMENT. Section 19-18-08 of the North Dakota Century Code is amended and reenacted as follows:

19-18-08. Penalties. Any person violating ~~any provision~~ of this chapter is guilty of an infraction. In any case where a registrant was issued a warning by the department commissioner pursuant to ~~the provisions~~ of this chapter, ~~such the~~ registrant is, upon violating ~~any provision~~ of this chapter other than subsection 1 of section 19-18-03, guilty of a class A misdemeanor, and the registration of the article with reference to which the violation occurred terminates automatically. A pesticide, the registration of which has been terminated, may not again be registered unless the pesticide, its labeling, and other material required to be submitted appear to the department commissioner to comply with all the requirements of this chapter. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the department commissioner through an administrative hearing pursuant to chapter 28-32.

SECTION 30. AMENDMENT. Section 19-18-10 of the North Dakota Century Code is amended and reenacted as follows:

19-18-10. Delegation of duties. All authority vested in the department commissioner by virtue of ~~the provisions~~ of this chapter may with like force and effect be executed by ~~such the~~ employees of the department commissioner as the department commissioner may from time to time designate for ~~said this~~ purpose.

SECTION 31. AMENDMENT. Section 19-18-11 of the North Dakota Century Code is amended and reenacted as follows:

19-18-11. Cooperation. ~~The department is authorized and empowered to~~ commissioner may cooperate with, and enter into agreements with, any other agency of this state or of the federal government or any other state or agency thereof for the purpose of carrying out ~~the provisions~~ of this chapter and securing uniformity of regulations.

¹²¹ **SECTION 32. AMENDMENT.** Section 19-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-01. Enforcing official. This chapter must be administered by the ~~state department of health and consolidated laboratories of the state of North Dakota~~ commissioner of agriculture, hereinafter referred to as the department commissioner.

¹²¹ Section 19-20.1-01 was also amended by section 2 of House Bill No. 1058, chapter 243.

¹²² **SECTION 33. AMENDMENT.** Subsections 6, 13, and 17 of section 19-20.1-02 of the North Dakota Century Code are amended and reenacted as follows:

6. "Fertilizer" means any substance containing one or more recognized plant nutrients ~~which that~~ is used for its plant nutrient content and ~~which that~~ is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by ~~department regulation~~ the commissioner by rule.
13. "Licensee" means any person licensed by the ~~department commissioner~~ to distribute a fertilizer, soil amendment, or plant amendment.
17. "Official sample" means any sample of fertilizer, soil amendment, or plant amendment, taken by the ~~department commissioner~~ and designated as "official" by the ~~department commissioner~~.

¹²³ **SECTION 34. AMENDMENT.** Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03. Registration. Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration must be submitted to the ~~department commissioner~~ on a form furnished by the ~~department commissioner~~ and must be accompanied by a fee of twenty-five dollars. Upon approval by the ~~department commissioner~~, a certificate of registration must be furnished to the applicant. All registrations expire on June thirtieth of each year. A distributor is not required to register any brand of fertilizer, soil amendment, or plant amendment ~~which that~~ is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements.

SECTION 35. AMENDMENT. Section 19-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.1. License required. ~~No~~ A person may not distribute any fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the ~~department commissioner~~. However, a distributor's license is not required for those distributors selling only specialty fertilizers. A license must be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license must be submitted on a form furnished by the ~~department commissioner~~, and must be accompanied by a fee of fifty dollars. All licenses expire on June thirtieth of each year. Licenses are not transferable, and each license must be conspicuously posted at each location and must accompany each mobile mechanical unit operating in the state.

¹²² Section 19-20.1-02 was also amended by section 1 of House Bill No. 1148, chapter 222.

¹²³ Section 19-20.1-03 was also amended by section 2 of House Bill No. 1148, chapter 222.

SECTION 36. AMENDMENT. Section 19-20.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.2. Proof of effectiveness. The department commissioner may require proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The department commissioner ~~shall~~ must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The department commissioner may accept or reject other sources of proof as additional evidence.

SECTION 37. AMENDMENT. Section 19-20.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.3. Protected information. In submitting data required by this chapter, the applicant may clearly mark any portions that in the applicant's opinion are trade secrets or commercial or financial information and submit the marked material separately from other material.

After consideration of the applicant's request, the department commissioner may decide not to allow the information to become public ~~which that~~ the department commissioner determines to contain or relate to trade secrets or to commercial or financial information obtained from an applicant. If necessary, information relating to formulas of products may be revealed to a state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the department commissioner. If the department commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure, the department commissioner shall notify the applicant or registrant by certified mail. The department commissioner may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may begin an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

¹²⁴ **SECTION 38. AMENDMENT.** Section 19-20.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.4. Guaranteed analysis. Until the department commissioner prescribes the alternative form of guaranteed analysis in accordance with the provisions of this section, guaranteed analysis must be claimed in the following order and form:

1. Total Nitrogen (N) _____ percent
- Available Phosphoric Acid (P₂O₅) _____ percent
- Soluble Potash (K₂O) _____ percent

¹²⁴ Section 19-20.1-03.4 was also amended by section 3 of House Bill No. 1148, chapter 222.

2. For unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness, or both, may also be guaranteed.
3. Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department commissioner. The guarantees for ~~such~~ any other nutrients must be expressed in the form of the element. The sources of other nutrients including oxides, salt, and chelates may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department commissioner and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the department commissioner.
4. The department commissioner may, by rule, require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
5. At any time ~~after July 1, 1967, when~~ the department commissioner finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in the elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, ~~it~~ the commissioner may require by rule that the guaranteed analysis be in the following form:

Total Nitrogen (N) _____ percent

Available Phosphorus (P) _____ percent

Soluble Potassium (K) _____ percent

The effective date of a rule under this subsection may not be less than six months following the issuance of the rule and for a period of two years following the effective date of the rule the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. After the effective date of a rule issued under this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium constitutes the grade.

6. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

SECTION 39. AMENDMENT. Subsections 1 and 4 of section 19-20.1-04 of the North Dakota Century Code are amended and reenacted as follows:

1. Any fertilizer, soil amendment, or plant amendment distributed in this state in containers must have placed on or affixed to the container a

label setting forth in clearly legible and conspicuous form the information required by the department commissioner.

4. The department commissioner may require the labels of specialty fertilizer sold in packages of fifty pounds [22.68 kilograms] or more, or sold in bulk, to contain the prominent statement "Not intended for farm use".

¹²⁵ SECTION 40. AMENDMENT. Section 19-20.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports. There must be paid to the department commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms] as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the department commissioner, on forms furnished by the department commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during such the period. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

SECTION 41. AMENDMENT. Section 19-20.1-07 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-07. Inspection fees and tonnage reports. When more than one person is involved in the distribution of a registered product, the last person who has the product registered under section 19-20.1-03 and who distributes to a nonregistrant is responsible for reporting the tonnage and paying the inspection fee. The department commissioner may verify the records on which the statement of tonnage is based.

¹²⁵ Section 19-20.1-06 was also amended by section 4 of House Bill No. 1148, chapter 222.

SECTION 42. AMENDMENT. Section 19-20.1-08 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-08. Inspection, sampling, analysis. ~~It shall be the duty of the department to~~ The commissioner shall sample, inspect, make analyses of, and test fertilizers, soil amendments, and plant amendments distributed within this state at time and place and to such an extent as the department commissioner may deem necessary to determine whether ~~such these~~ these products are in compliance with the ~~provisions~~ of this chapter. The department commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to products subject to the ~~provisions~~ of this chapter and the rules ~~pertaining to~~ adopted under this chapter. The methods of analysis and sampling must be those adopted by the department commissioner from sources such as the A.O.A.C. journal. In cases not covered by ~~such these~~ these methods, or if methods are available in which improved applicability has been demonstrated, the department commissioner may adopt ~~such~~ appropriate methods from other sources.

In sampling a lot of fertilizer, a single package may constitute the official sample. The department commissioner, in determining for administrative purposes whether any fertilizer, soil amendment, or plant amendment is deficient, ~~shall must~~ be guided solely by the official sample obtained and analyzed by the department commissioner. The results of official analysis of any fertilizer, soil amendment or plant amendment ~~which that~~ has been found to be subject to penalty or other legal action ~~shall must~~ be forwarded by the department commissioner to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the department commissioner, the report becomes official. Official samples found to be deficient must be retained by the laboratory commissioner for thirty days from issuance of the analytical report. Upon request the department commissioner shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

SECTION 43. AMENDMENT. Section 19-20.1-10 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-10. Misbranding. A fertilizer, soil amendment, or plant amendment is misbranded if false or misleading statements concerning the product are disseminated in any manner or by any means, if it carries a false or misleading statement on the label or labeling, if it is distributed under the name of another product, if it is not labeled as required by section 19-20.1-04 and in accordance with rules adopted under this chapter, and if it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless ~~such the~~ plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by rule of the department commissioner. In adopting ~~such these~~ these rules the department commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. It is unlawful to distribute a misbranded fertilizer, soil amendment, or plant amendment.

SECTION 44. AMENDMENT. Section 19-20.1-11 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-11. Publications. The department commissioner may publish in ~~such the forms as it may deem~~ the commissioner determines proper:

1. Information concerning the distribution of fertilizers, soil amendments, and plant amendments.

2. Results of analyses based on official samples of fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

SECTION 45. AMENDMENT. Section 19-20.1-12 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-12. Rules. For the enforcement of this chapter, the department commissioner is authorized to adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, soil amendments, and plant amendments as necessary to carry into effect the full intent and meaning of this chapter. ~~When adopting any rules under the authority of this section, the department shall follow the procedures provided in chapter 28-32.~~

¹²⁶ **SECTION 46. AMENDMENT.** Subsections 3 and 4 of section 19-20.1-13 of the North Dakota Century Code are amended and reenacted as follows:

3. For the purpose of determining the commercial index value to be applied, the department commissioner shall determine at least annually the values per unit of nitrogen, available phosphoric acid, and soluble potash in fertilizers in this state.
4. If any fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the department commissioner to be short in weight, the registrant of the product shall within thirty days after official notice from the department commissioner pay to the consumer a penalty equal to four times the value of the actual shortage.

SECTION 47. AMENDMENT. Section 19-20.1-14 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-14. Cancellation of registrations. The department commissioner may cancel the registration of any brand of fertilizer, soil amendment, or plant amendment and may cancel the license of any distributor or may refuse to register any brand of fertilizer, soil amendment, or plant amendment or may refuse to license any distributor as herein provided, upon satisfactory evidence that the registrant, licensee, or distributor has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules adopted under this chapter. No registration or license may be revoked or refused without opportunity for hearing given by the department commissioner.

SECTION 48. AMENDMENT. Section 19-20.1-15 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-15. "Stop-sale" orders. The department commissioner may issue and enforce a written or printed "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, soil amendment, or plant amendment and an order to hold at a designated place when the department commissioner finds the fertilizer,

¹²⁶ Section 19-20.1-13 was also amended by section 5 of House Bill No. 1148, chapter 222.

soil amendment, or plant amendment is being offered or exposed for sale in violation of this chapter or a rule adopted under this chapter until the law or rule has been complied with and the fertilizer, soil amendment, or plant amendment is released in writing by the department commissioner or the violation has been otherwise legally disposed of by written authority. The department commissioner shall release the fertilizer, soil amendment, or plant amendment so withdrawn when the requirements of this chapter and the rules adopted under this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

SECTION 49. AMENDMENT. Section 19-20.1-16 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-16. Seizure, condemnation, and sale. Any lot of fertilizer, soil amendment, or plant amendment not in compliance with this chapter and the rules adopted under this chapter is subject to seizure on complaint of the department commissioner to the district court in the county in which the fertilizer, soil amendment, or plant amendment is located. In the event the court finds the fertilizer, soil amendment, or plant amendment to be in violation of this chapter or a rule adopted under this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the fertilizer, soil amendment, or plant amendment and the laws of the state. In no instance may the disposition of the fertilizer, soil amendment, or plant amendment be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the fertilizer, soil amendment, or plant amendment or for permission to process or relabel the fertilizer, soil amendment, or plant amendment to bring it into compliance with this chapter and the rules adopted under this chapter.

SECTION 50. AMENDMENT. Section 19-20.1-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-17. Violations - Penalty.

1. If it appears from the examination of any fertilizer, soil amendment, or plant amendment that any of the provisions of this chapter or the rules adopted under this chapter have been violated, the department commissioner shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken. Any person so notified must be given opportunity to be heard under rules adopted by the department commissioner. If it appears after ~~such~~ the hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules adopted under this chapter have been violated, the department commissioner may certify the facts to the proper prosecuting attorney.
2. Any person convicted of violating this chapter or the rules adopted under this chapter or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department commissioner in the performance of ~~its~~ the commissioner's duty in connection with this chapter or the rules adopted under this chapter is guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of fertilizers, soil amendments, or plant amendments, a certified copy of the official analysis signed by the ~~director of the chemistry division of the department~~ person performing the analysis or ~~the director's~~ that person's assigned agent must be accepted as prima facie evidence of the composition.

3. Nothing in this chapter may be construed as requiring the ~~department commissioner~~ to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when the ~~director commissioner~~ believes that the public interests will be best served by a suitable notice of warning in writing.
4. It is the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
5. The ~~department commissioner~~ may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

SECTION 51. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function. Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 19-13.1, 19-18, or 19-20.1 must be performed by the state department of health and consolidated laboratories for the commissioner of agriculture at no charge.

SECTION 52. REPEAL. Section 19-18-01 of the North Dakota Century Code is repealed.

Approved April 4, 1995
Filed April 4, 1995

CHAPTER 220

HOUSE BILL NO. 1149

(Representative D. Henegar)

(At the request of the State Department of Health and Consolidated Laboratories)

FEED AND PET FOOD REGISTRATION AND INSPECTION

AN ACT to amend and reenact sections 19-13.1-03 and 19-13.1-06 of the North Dakota Century Code, relating to pet food registration and feed inspection fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁷ SECTION 1. AMENDMENT. Section 19-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-03. Registration and license.

1. Each pet food and specialty pet food must be registered before being distributed in this state. The application for registration must be submitted on forms furnished by the department. The application must be accompanied by a label and any other printed matter describing each product and the registration fee of ~~twenty five~~ fifty dollars per product. Upon approval by the department, a certificate of registration must be furnished to the applicant. Registrations are not transferable. ~~All registrations expire on December thirty-first of each year. Registration covers a two-year period beginning January first and ending December thirty-first.~~ Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product. Products found marketed in this state without proper registration must be assessed the penalty fee of twenty-five dollars.
2. A distributor is not required to register any brand of pet food or specialty pet food that is already registered under this chapter by another person.
3. Each person who manufactures commercial feed or whose name appears on the label of a commercial feed, other than pet food or specialty pet food, shall obtain a feed manufacturer's license from the department for each location. Each person who sells commercial feed, other than pet food or specialty pet food, at retail, shall obtain a feed retailer's license from the department. The license application must be on forms furnished by the department and must be accompanied by a fee of ~~fifty one hundred~~ fifty dollars for feed manufacturers or ~~twenty five~~ fifty dollars for feed retailers. The license covers a two-year period

¹²⁷ Section 19-13.1-03 was also amended by section 3 of Senate Bill No. 2075, chapter 219.

beginning January first and ending December thirty-first. If a manufacturer is also a retailer of feed, the retail license is waived. A feed retailer's license must be obtained for each location used by the retailer. ~~All licenses expire on December thirty-first of each year.~~ Licenses are not transferable. License renewal applications received after January thirty-first may be assessed a penalty fee of ten dollars for retailers and twenty dollars for manufacturers. This subsection does not apply to any person who custom manufactures feed only for another person at that person's request and for that person's own use.

4. Each feed manufacturer required to be licensed under this chapter shall submit and maintain a current label file of all the feeds distributed in the state with the department except custom formula feeds.
5. The department may refuse to register or license any product or applicant not in compliance with the provisions of this chapter and to cancel any registration or license subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration or license may be refused or canceled until the registrant or licensee has been given opportunity to be heard before the department and to amend the application in order to comply with the requirements of this chapter.

¹²⁸ SECTION 2. AMENDMENT. Section 19-13.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-06. Inspection fees. There must be paid to the department for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain, and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the thirty-first day of January of each year, an annual statement under oath, setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding year; and upon filing such statement shall pay the inspection fee. ~~When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage~~ The person whose name appears on the label as the manufacturer, guarantor, or distributor shall assume the liability for reporting and paying the inspection fee.
2. Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department has the right to examine such records to verify statements of tonnage.

¹²⁸ Section 19-13.1-06 was also amended by section 4 of Senate Bill No. 2075, chapter 219.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

Approved April 5, 1995

Filed April 5, 1995

CHAPTER 221

HOUSE BILL NO. 1147

(Representative D. Henegar)

(At the request of the State Department of Health and Consolidated Laboratories)

PESTICIDE PRODUCT REGISTRATION SCHEDULES

AN ACT to amend and reenact section 19-18-04 of the North Dakota Century Code, relating to pesticide product registration schedules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁹ SECTION 1. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file ~~annually~~ biennially with the department an application for registration of such pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product registered.
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by a registration fee of ~~one hundred fifty~~ three hundred dollars for each product registered. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such registrations. The state treasurer shall credit ~~twenty-five~~ fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet.

The department may require an applicant or registrant to provide 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. If the department finds that the application conforms to law, the department shall issue to the applicant a certificate of registration of the product. If after public hearing before the department the application is denied, the product may not be offered for sale.

Each registration ~~expires on the thirty-first of December following its issuance~~ covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term

¹²⁹ Section 19-18-04 was also amended by section 22 of Senate Bill No. 2075, chapter 219.

longer than ~~one year~~ two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January ~~first of each year~~ thirty-first following the expiration date, or within the same month such pesticides are first manufactured or sold within this state.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

Approved March 14, 1995

Filed March 14, 1995

CHAPTER 222

HOUSE BILL NO. 1148

(Representative D. Henegar)

(At the request of the State Department of Health and Consolidated Laboratories)

FERTILIZER LICENSING, REGISTRATION, AND FEES

AN ACT to amend and reenact sections 19-20.1-02, 19-20.1-03, 19-20.1-03.4, 19-20.1-06, and 19-20.1-13 of the North Dakota Century Code, relating to definitions applicable to the registration and licensing of fertilizers, fertilizer registration schedules, guaranteed analysis of fertilizer, fertilizer inspection fees and tonnage reports, and phosphates; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁰ SECTION 1. AMENDMENT. Section 19-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-02. Definitions of words and terms. When used in this chapter:

1. "Brand" means a term, design, or trademark used in connection with one or several grades of fertilizer, soil amendments, or plant amendments.
2. "Bulk" means in a nonpackaged form.
3. "Compost" is a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that does not have inorganic fertilizer added other than to promote decomposition.
4. "Deficiency" means that amount of plant nutrient or active ingredient found by analysis is less than the amount guaranteed resulting from a lack of nutrient or active ingredients or from lack of uniformity.
5. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends fertilizer, soil amendments, or plant amendments, or who sells or offers for sale fertilizer, soil amendments, or plant amendments in this state.
6. "End user" means a person who uses a fertilizer, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime,

¹³⁰ Section 19-20.1-02 was also amended by section 33 of Senate Bill No. 2075, chapter 219.

limestone, wood ashes, and other products excluded by department regulation.

- ~~7~~ 8. "Fertilizer material" is a fertilizer which either:
- Contains no more than one of the primary plant nutrients;
 - Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
 - Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
- ~~8~~ 9. "Foliar fertilizer" means a fertilizer designed and ordinarily applied directly to growing plant foliage to stimulate further growth.
- ~~9~~ 10. "Grade" means the percentages of total nitrogen, available ~~phosphorus~~ ~~or phosphoric acid~~ phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis". "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
- ~~10~~ 11. "Inert" means any ingredient not active.
- ~~11~~ 12. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.
- ~~12~~ 13. "Label" means all written, printed, or graphic matter upon or accompanying any fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting the sale thereof.
- ~~13~~ 14. "Licensee" means any person licensed by the department to distribute a fertilizer, soil amendment, or plant amendment.
- ~~14~~ 15. "Manipulated" means fertilizers, soil amendments, or plant amendments that are manufactured, blended, or mixed, or animal or vegetable manures that have been treated in any manner, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.
- ~~15~~ 16. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.
- ~~16~~ 17. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, soil amendments, or plant amendments.
- ~~17~~ 18. "Official sample" means any sample of fertilizer, soil amendment, or plant amendment, taken by the department and designated as "official" by the department.

- ~~18.~~ 19. "Organic" in reference to fertilizer nutrients refers only to naturally occurring substances generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
- ~~19.~~ 20. "Percent" or "percentage" means the percentage by weight.
- ~~20.~~ 21. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
- ~~21.~~ 22. "Plant nutrient" means a nutrient generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
- ~~22.~~ 23. "Primary plant nutrients" are nitrogen, ~~phosphoric acid~~ phosphate, and potash.
- ~~23.~~ 24. "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under the provisions of this chapter.
- ~~24.~~ 25. "Sell" when applied to fertilizers, soil amendments, or plant amendments includes:
- The act of selling, transferring ownership.
 - The offering and exposing for sale, exchange, or distribution.
 - Giving away.
 - Receiving, accepting, holding, or possessing for sale, exchange, or distribution.
- ~~25.~~ 26. "Small package fertilizer" means fertilizer sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.
- ~~26.~~ 27. "Soil amendment" means any substance which is intended to improve the characteristics of the soil except fertilizers, ~~agricultural liming materials~~, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides. The term ~~shall include~~ includes fertilizer if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
- ~~27.~~ 28. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.
- ~~28.~~ 29. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

¹³¹ SECTION 2. AMENDMENT. Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03. Registration. Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration must be submitted to the department on a form furnished by the department and must be accompanied by a fee of ~~twenty-five~~ fifty dollars. Upon approval by the department, a certificate of registration must be furnished to the applicant. All registrations expire on June thirtieth of each year. Registrations cover a two-year period beginning July first and ending June thirtieth. Distribution of fertilizer products without prior registration or renewal received after July thirty-first must be assessed a penalty of twenty-five dollars per product. A distributor is not required to register any brand of fertilizer, soil amendment, or plant amendment which is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements.

¹³² SECTION 3. AMENDMENT. Section 19-20.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.4. Guaranteed analysis. Until the department prescribes the alternative form of guaranteed analysis in accordance with the provisions of this section, guaranteed analysis must be claimed in the following order and form:

1. Total Nitrogen (N) _____ percent
 Available ~~Phosphoric Acid~~ Phosphate (P₂O₅) _____ percent
 Soluble Potash (K₂O) _____ percent
2. For unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials, the total ~~phosphoric acid phosphate~~ or degree of fineness, or both, may also be guaranteed.
3. Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for such other nutrients must be expressed in the form of the element. The sources of other nutrients including oxides, salt, and chelates may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the department.

¹³¹ Section 19-20.1-03 was also amended by section 34 of Senate Bill No. 2075, chapter 219.

¹³² Section 19-20.1-03.4 was also amended by section 38 of Senate Bill No. 2075, chapter 219.

4. The department may, by rule, require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
5. At any time after July 1, 1967, when the department finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in the elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by rule that the guaranteed analysis be in the following form:

Total Nitrogen (N) _____ percent

Available Phosphorus (P) _____ percent

Soluble Potassium (K) _____ percent

The effective date of a rule under this subsection may not be less than six months following the issuance of the rule and for a period of two years following the effective date of the rule the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. After the effective date of a rule issued under this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium constitutes the grade.

6. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition including the percentages of each ingredient. If the product is a microbiological product, the number of viable microorganisms per milliliter for a liquid or the number of viable microorganisms per gram for a dry product must also be listed.

¹³³ SECTION 4. AMENDMENT. Section 19-20.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports. There must be paid to the department for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages

¹³³ Section 19-20.1-06 was also amended by section 40 of Senate Bill No. 2075, chapter 219.

over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms] as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the department, on forms furnished by the department, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during such period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

¹³⁴ SECTION 5. AMENDMENT. Section 19-20.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-13. Deficiencies.

1. A product is deficient if one or more of its guaranteed primary plant nutrients or other guaranteed active ingredients falls below the investigational allowances and compensations as established by rule or if the overall index value of the fertilizer is shown below the level established by rule.
2. A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
3. For the purpose of determining the commercial index value to be applied, the department shall determine at least annually the values per unit of nitrogen, available ~~phosphoric acid~~ phosphate, and soluble potash in fertilizers in this state.
4. If any fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the department to be short in weight, the registrant of the product shall within thirty days after official notice from the department pay to the consumer a penalty equal to four times the value of the actual shortage.

Approved March 14, 1995
Filed March 14, 1995

¹³⁴ Section 19-20.1-13 was also amended by section 46 of Senate Bill No. 2075, chapter 219.

CHAPTER 223

SENATE BILL NO. 2428

(Senator Tomac)

ANHYDROUS AMMONIA FACILITIES

AN ACT to create and enact four new sections to chapter 19-20.2 of the North Dakota Century Code, relating to definitions, pressure relief valves, an anhydrous ammonia storage facility inspection fund, and prohibited activities involving anhydrous ammonia tanks; to amend and reenact sections 19-20.2-01, 19-20.2-02, 19-20.2-03, 19-20.2-04, 19-20.2-05, 19-20.2-06, 19-20.2-07, 19-20.2-08, 19-20.2-09, and 19-20.2-10 of the North Dakota Century Code, relating to anhydrous ammonia storage facilities; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Definition. "Anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.

SECTION 2. AMENDMENT. Section 19-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-01. Anhydrous ammonia safety rules. ~~Except as otherwise required by law, the~~ The commissioner of agriculture shall adopt rules necessary to implement this chapter and adopt the 1989 American national standard safety requirements for the storage and handling of anhydrous ammonia, except sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2 of the 1989 American national standard safety requirements are adopted as follows:

1. (2.5) Refers to paragraphs U-68, U-69, U-200, or U-201 of section VIII of the boiler and pressure vessel code of the American society of mechanical engineers, 1949 edition, or to section VIII division I of the boiler and pressure vessel code of the American society of mechanical engineers, 1950 edition, through the current edition including addenda and applicable code case interpretations.

Where referenced in this standard only section VIII division I of the American society of mechanical engineers code applies except that paragraphs UG-125 through UG-135 and paragraph UW-2 do not apply.

2. (5.2.1) Containers used with systems covered in sections 6, 9, 11, and 12 must be made of steel or other material compatible with ammonia, and tested in accordance with the current American society of mechanical engineers code. An exception to the American society of mechanical engineers code requirements is that construction under table UW 12 at a basic joint efficiency of under eighty percent is not authorized.

3. (5.2.2.2) Steels used in fabricating pressure containing parts of a container must have a tensile strength no greater than a nominal seventy-five thousand pounds per square inch [517110 kilopascals]; except this does not apply to sections 8, 9, and 10. (5.2.2.1) For new tanks installed or purchased after January 1, 1996, the entire container must be post-weld heat treated after completion of all welds in or to the shells and heads. The method employed must be as prescribed in the American society of mechanical engineers code. It is recommended that post-weld heat treatment be performed in a furnace of a size sufficient to accommodate the entire container. Welded attachments to pads may be made after post-weld heat treatment.
4. (5.2.2.2) Steels used in fabricating pressure containing parts of a container may not exceed a specified tensile strength of seventy-five thousand pounds per square inch [517110 kilopascals], as noted in the American society of mechanical engineers code, section II, part D, except that this does not apply to sections 8, 9, and 10. Allowances for tensile strength of up to twenty thousand pounds per square inch [137900 kilopascals] above those given in the American society of mechanical engineers code, section II, part D, are permitted.

SECTION 3. AMENDMENT. Section 19-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-02. License required - Existing anhydrous ammonia storage facilities. Any user or ~~retail~~ vendor of anhydrous ammonia owning ~~one or more bulk or operating an anhydrous ammonia storage facilities exceeding six thousand gallons [22,712.47 liters] of storage capacity and constructed before July 1, 1985, facility~~ shall apply for an operator's license to the commissioner of agriculture ~~before September 30, 1985. However, any~~ and the board of county commissioners of the county in which the facility is located. Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter, and may receive a license under this chapter regardless of noncompliance with the siting requirements. The commissioner may deny a license for failure to remit the proper fee with the application, or failure to comply with the rules adopted pursuant to this chapter. The license is valid indefinitely, but may not be transferred.

SECTION 4. AMENDMENT. Section 19-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-03. License required - Construction of anhydrous ammonia facilities. No ~~permanent~~ anhydrous ammonia storage facility may be constructed ~~after June 30, 1985, or operated~~ without a license issued by the commissioner of agriculture and the board of county commissioners of the county in which the facility is to be constructed. An application for a license to site ~~and operate~~ an anhydrous ammonia storage facility must be made to the commissioner of agriculture and to the board of county commissioners. The commissioner or the board may deny a license for failure to remit the proper fee to the commissioner of agriculture, for failure to comply with the siting requirements of this chapter and rules adopted pursuant to this chapter ~~if constructed after June 30, 1985, or for failure to comply with local siting requirements. The commissioner of agriculture also may deny a license if the chief boiler inspector does not certify that the facility meets the initial inspection standards required by this chapter and by any rules adopted pursuant to this chapter. In order to obtain a license, an individual shall submit two sets of drawings or photographs and signed affidavits stating and showing the facility has been measured and meets the siting requirements along with the application for license.~~

The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. One set of drawings or photographs is for the commissioner of agriculture and the other is for the board of county commissioners.

SECTION 5. AMENDMENT. Section 19-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-04. State license fee. The commissioner of agriculture shall charge a one-time fee for a license for each anhydrous ammonia storage facility site. The licensing fee is twenty-five dollars for ~~a bulk~~ an anhydrous ammonia storage facility exceeding six thousand gallons [22,712.47 liters] of storage capacity and one hundred dollars for each retail and storage site. Expansion of an existing anhydrous ammonia storage facility, including the expansion of a facility constructed before July 1, 1985, does not require reapplication for licensing, but all siting requirements must be met. When an anhydrous ammonia storage facility changes ownership, the new owner shall obtain a license.

SECTION 6. AMENDMENT. Section 19-20.2-05 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-05. State siting requirements - Facilities Anhydrous ammonia storage facilities constructed after June 30, 1985. For facilities constructed after June 30, 1985:

1. Any ~~permanent~~ anhydrous ammonia storage facility with a container nominal capacity of less than one hundred thousand gallons [378541.2 liters] must be ~~sited~~ located at least:
 - a. Fifty feet [15.24 meters] from the line of any adjoining property which may be built upon, or any highway or railroad mainline.
 - b. Four hundred fifty feet [137.16 meters] from any place of public assembly or residence, other than the company's business office.
 - c. Seven hundred fifty feet [213.36 meters] from any institutional residence.
2. Any ~~permanent~~ anhydrous ammonia storage facility with container nominal capacity of one hundred thousand gallons [378541.2 liters] or more must be located at least:
 - a. Fifty feet [15.24 meters] from the property line of adjoining property, which may be built upon, or any highway or railroad mainline.
 - b. Six hundred feet [182.88 meters] from any place of public assembly or residence, other than the company's business office.
 - c. One thousand feet [300.48 meters] from any institution residence.
3. Upon relocation of any permanent storage container to an anhydrous ammonia storage facility, the container must be hydrostatically pressure tested at the maximum allowable working pressure of the vessel or wet fluorescent magnetic particle tested, also referred to as black light tested. Before the container may be put into service and before licensing may

occur, proof of testing must be supplied to the county and the commissioner of agriculture.

4. All valves and other appurtenances to any anhydrous ammonia storage facility must be protected against physical damage. All shutoff valves must be kept closed and locked when not in use and when the facility is unattended.
5. Any anhydrous ammonia storage facility relocated or constructed after August 1, 1995, may not be located within city limits, unless approved by the city.

SECTION 7. AMENDMENT. Section 19-20.2-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-06. Transfer hose requirements. The following requirements apply to any transfer hose utilized at an anhydrous ammonia storage facility:

1. Any liquid transfer hose that is not drained of liquid upon completion of transfer operations must be equipped with an approved shutoff valve at the discharge end.
2. ~~To prevent excessive hydrostatic pressure in hoses, differential pressure pass valves may be added, not to exceed fifty pounds per square inch [344.74 kilopascals] of pressure; A hydrostatic relief valve or equivalent must be installed in each section of hose or pipe in which liquid ammonia can be isolated between shutoff valves to relieve the pressure that could develop from the trapped liquid. If an equivalent pressure relief device is used, the maximum accumulated pressure possible within the system may not exceed the limits of the system. A hydrostatic relief valves may valve must be installed between each pair of valves in which liquid may be is trapped; or a hose may be used to discharge liquid at a safe location. Any. The start-to-discharge pressure setting of the relief valve must not be designed to handle less than three hundred fifty pounds per square inch [2413.18 kilopascals] gauge nor more than four hundred pounds per square inch [2757.92 kilopascals] gauge.~~
3. ~~Pressure relief valves must be replaced every five years.~~
4. A transfer hose must have etched, cast, or impressed on the outer coating all of the following:
 - a. The words "ANHYDROUS AMMONIA".
 - b. The maximum working pressure of the transfer hose.
 - c. The name of the manufacturer of the hose.
 - d. The date of manufacture or the expiration date of the hose.
- 5- 4. A transfer hose cut, scraped, cracked, or weathered so that the inner white cord is visible must be replaced. A transfer hose with an expiration date printed on the hose must be replaced prior to that date. Transfer hoses without an expiration date must be replaced as follows:

- a. Rayon hoses must be replaced within two years of the date of manufacture.
- b. Nylon hoses must be replaced within four years of the date of manufacture.
- c. Steel reinforced hoses must be replaced within six years of the date of manufacture.

Notwithstanding the replacement dates determined under this subsection for transfer hoses with or without an expiration date, an additional year must be allowed for replacement of transfer hoses in order to take into account delays in the original installation of transfer hoses.

SECTION 8. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Pressure relief devices. Bulk storage containers constructed according to the American society of mechanical engineers code, and all nurse tanks, must be equipped with pressure relief valves constructed according to the American society of mechanical engineers code and capacity certified by the national board of boiler and pressure vessel inspectors. A pressure relief valve using nonmetallic seats must be replaced every five years with a new valve meeting the standards referenced in this section. A pressure relief value using metallic seats must be tested every five years in lieu of replacement, and repairs, if deemed necessary, must be made by the valve manufacturer or by a safety valve repair organization having a valid "VR" certificate of authorization for the repairs from the national board of boiler and pressure vessel inspectors.

SECTION 9. AMENDMENT. Section 19-20.2-07 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-07. Inspection.

1. The chief boiler inspector and the commissioner of insurance shall cooperate with the commissioner of agriculture to develop and implement an initial and periodic inspection program for anhydrous ammonia storage facilities. The chief boiler inspector shall inform the commissioner of agriculture of any violation of this chapter that may arise in the course of an inspection of an anhydrous ammonia storage facility.
2. The commissioner may of insurance shall inspect each permanent installation for storage of anhydrous ammonia storage facility at least once every five years and each may inspect any farm transportation wagon or vehicle designed to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage facility.
- 2+ 3. The commissioner shall of insurance may inspect any anhydrous ammonia storage facility where the commissioner has reason to believe violations of the safety standards under this chapter exist. The safety engineer of the North Dakota workers compensation bureau shall inform the commissioner of agriculture of any violations of this chapter that arise in the course of the safety engineer's regular inspections of anhydrous ammonia storage facilities.

- 3- 4. The commissioner of agriculture may revoke or suspend the license of any anhydrous ammonia storage facility violating this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any farm transportation wagon or implement of husbandry which is found unsafe or hazardous.

SECTION 10. AMENDMENT. Section 19-20.2-08 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08. Promotion of safety - Use of excess fees. ~~Any excess~~ All fees collected under this chapter must be used by the commissioner of agriculture to promote safety in anhydrous ammonia use and storage, in the administration of the program, and in the inspection of facilities.

SECTION 11. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Anhydrous ammonia storage facility inspection fund. The anhydrous ammonia storage facility inspection fund is a special fund in the state treasury. The fund consists of all inspection fees collected in accordance with section 19-20.1-06 which are related to the distribution of anhydrous ammonia.

SECTION 12. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Prohibitions. The following action is prohibited:

1. Filling a nurse tank directly from a rail car.
2. Filling or using a nurse tank that has an outdated hose.
3. Filling or using a nurse tank that has outdated relief valves.
4. Towing more than two nurse tanks on a public road.
5. Filling department of transportation transport containers not currently certified by the department of transportation.
6. Filling anhydrous ammonia storage tanks not meeting the requirements of this chapter.

SECTION 13. AMENDMENT. Section 19-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-09. Enforcement.

1. The commissioner of agriculture shall enforce the requirements of this chapter and any rules issued under it.
2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule issued pursuant to this chapter, in the district court of the county in which the violation occurs or is about to occur.
3. The commissioner of agriculture may seek an injunction in the district court of the county where any alleged violation is occurring; or may

issue a cease and desist order to any person allegedly violating this chapter. If any person violates the cease and desist order, the commissioner shall file the appropriate criminal complaint.

4. For the purpose of carrying out this chapter, the commissioner of agriculture and the commissioner of insurance may enter upon any public or private premises at reasonable times to:
 - a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used.
 - b. Inspect or investigate complaints.
 - c. Inspect any premises or other place where anhydrous ammonia or devices are held for distribution, sale, or use.
5. If a civil penalty pursuant to section 19-20.2-10 is imposed by the commissioner of agriculture through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

SECTION 14. AMENDMENT. Section 19-20.2-10 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-10. Penalty.

1. Any person violating this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person is deemed to be the act, omission, or failure of the person as well as that of the person employed.
3. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner of agriculture through an administrative hearing.

SECTION 15. TRANSFER. There is hereby authorized the transfer to the fire and tornado fund the sum of \$140,000 from the anhydrous ammonia storage facility inspection fund. The money must be transferred during the biennium beginning July 1, 1995, and ending June 30, 1997, upon order of the commissioner of insurance. The state treasurer shall transfer any balance remaining in the anhydrous ammonia storage facility inspection fund on June 30, 1997, to the general fund in the state treasury.

SECTION 16. APPROPRIATION. There is hereby appropriated out of any moneys in the fire and tornado fund the sum of \$120,000, or so much of the sum as may be necessary, to the commissioner of insurance for the purpose of inspecting anhydrous ammonia storage facilities for the biennium beginning July 1, 1995, and ending June 30, 1997.

SECTION 17. APPROPRIATION. There is hereby appropriated out of any moneys in the fire and tornado fund the sum of \$20,000, or so much of the sum as may be necessary, to the commissioner of agriculture for the purpose of administering and enforcing the provisions of this Act for the biennium beginning July 1, 1995, and ending June 30, 1997.

Approved April 12, 1995

Filed April 13, 1995