

ARTICLE 60-03 PESTICIDES

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

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60-03-01-01. Scope. Repealed effective 2012. This chapter is promulgated pursuant to North Dakota Century Code chapter 4-35 and shall apply to any sale, distribution, or use of pesticides within this state. This chapter shall be applied in conjunction with North Dakota Century Code chapter 4-35.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-35-06

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

1. ~~“Act” means the North Dakota Pesticide Act.~~

1. “Agricultural plants” means any plants grown or maintained for commercial or research purposes.

22. “Board” means the North Dakota pesticide control board created pursuant to North Dakota Century Code section 4-35-02.

3. ~~“Broadcast” means any intentional application of a pesticide over an area, such as a lawn, field, room, crawl space, or other such surface.~~

34. “Bulk pesticide” means any volume of pesticide that is intended to be repackaged, can be accurately metered measured, and can be transported or held in an individual container.

45. ~~“Bulk pesticide facility” means any area, location, tract of land, building, structure, or premises place used for the to handle ing or store age of bulk pesticides.~~

56. “Certification” means recognition by the board or its designee that a person is competent and thus authorized as a to use or supervise the use of restricted use pesticides.

a. certified private applicator to use or supervise the use of restricted use pesticides in noncommercial settings.

b. certified commercial applicator to use a restricted use pesticide or supervise the use of a general use pesticide in commercial settings.

c. certified public applicator to use a restricted use pesticide or supervise the use of a general use pesticide in settings that do not require maintaining proof of financial responsibility.

d. certified dealer to distribute restricted use pesticides.

67. “Commissioner” means the North Dakota agriculture commissioner.

78. “Compensation” means monetary payment for a specific service.

89. "Competent" means properly-qualified to perform functions associated with pesticide applications, the degree of ~~capability~~ competency required being directly related to the nature of the activity and the associated responsibility, including receiving proper training to know and understand the pesticide label, the product name and application rate to be applied, proper application techniques, recordkeeping requirements, ~~identifying workplace hazards~~, worker protection standards, and emergency response, ~~and also be able to identify workplace hazards.~~
940. "Custom blend" means any diluted mixture of pesticide prepared by a dealer to the specifications of the end-user and not held in inventory.
1044. "End-use labeling" means the written, printed, or graphic matter on, or attached to, or accompanying the pesticide or device or any of its containers or wrappers.
1142. "End-user" means the person who applies the pesticide.
1243. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as codified and amended at 7 U.S. Code §§ 136-136y.
13. "Fumigant pesticide" means a chemical compound whose pesticidal action occurs in a gaseous state.
14. "General use pesticide" means any pesticide formulation which is not classified for restricted use ~~by the board.~~
15. "Handling" means the mixing, loading, application, repackaging, storage, transportation, distribution, sale, purchase, or disposal of pesticides.
16. "Mixture" means any ~~diluted combination of pesticide~~ combined with fertilizer, seed, or other ~~medium~~ substance.
17. "Mobile container" means a container used to transport pesticides.
18. "Operational area" means: ~~a permanent containment area where pesticides are transferred, loaded, unloaded, mixed, repackaged, or refilled; where pesticides are cleaned or rinsed from containers; or application, handling, storage, or transportation equipment.~~
- a. An area within a permanent containment area where pesticides are transferred, loaded, unloaded, mixed, repackaged, or refilled; or
- b. An area where pesticides are rinsed from a container.
19. "Permanent containment area" means:

- a. An aboveground pad or dike constructed of impervious material, such as sealed concrete, stainless steel, or other material as approved by the department of agriculture registrant; unless the commissioner approves or requires material other than that approved by the registrant; or
- b. An area that has aB bermed, or curbed, sloped, or is otherwise designed to contain spills, leaks, releases, or other discharges that are generated may occur during the while handling of pesticides or pesticide-containing materials;
- c. ~~Does not have a drain which exits the containment area;~~ and
- d. ~~All seams and cracks must be sealed to prevent leakage.~~

20. "Pesticide-containing material" means:

- a. Any container of a pesticide product that has not been triple-rinsed or the equivalent of triple-rinsed;
- b. Any rinsate that is derived from a pesticide container, pesticide application equipment, or equipment washing;
- c. Any material that is used to collect or contain excess or spilled pesticide or rinsate;
- d. Any mixture of pesticide and diluent such as wash water, rinse water, or rainwater; or
- e. Material that is generated as a result of contact with or utilization of a pesticide in an application, containment, recovery, reuse, or treatment system. The term does not include personal protective equipment that contains pesticide residue.

21. "Pesticide-producing establishment" means any site where a pesticide is manufactured, packaged, repackaged, prepared, processed, labeled, relabeled, or held for distribution.

22. "Registrant" means the person holding the pesticide product registration under North Dakota Century Code Chapter 19-18.

2322. "Repackaging" means the transfer of a pesticide in an unaltered state from a container into a designated or dedicated refillable container for the purpose of distribution.

23. ~~"Rinsate" means a dilute mixture of pesticide obtained by rinsing pesticide containers or from rinsing the inside and outside of spray equipment.~~
24. "Spill kit" means a portable kit or other equipment that is designed to recover, minimize, contain, or absorb spills, leaks, releases, or other discharges of pesticides. A spill kit must include the following:
- a. Enough absorbent material, or any combination of absorbent pads, pillows, or tubes sufficient to absorb five gallons of liquid;
 - b. One or more impervious containers with a combined minimum capacity of ten gallons; and
 - c. Adequate tools to collect and place pesticide contaminated material in containers.
25. "Under the direct supervision" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied. The certified applicator must be able to physically arrive at the location of a supervised applicator within thirty minutes.
26. ~~"Use of a pesticide" means the leading, mixing, filling application equipment, applying, storing, transporting, distributing, and disposing of a pesticide.~~
27. "Use of a pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner that is not permitted by the labeling, except that the term does not apply to any of the following:
- a. Applying a pesticide at any dosage, concentration, or frequency that is less than that specified on the label, unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.
 - b. Applying a pesticide against any target pest that is not specified on the labeling if the application is to the crop, animal, or site that is specified on the label.
 - c. Employing any method of application that is not prohibited by the labeling unless the label specifically states that the product may be applied only by the methods specified on the labeling.

- d. Mixing a pesticide or pesticides with a fertilizer when the labeling does not prohibit such mixture.
- e. Any use of a pesticide that is in compliance with section 5, 18, or 24 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 [Pub. L. 104-170; Stat. 7 U.S.C. 136 et seq.].

History: Amended effective April 15, 1985; October 1, 1990; July 1, 1992; March 1, 2003; July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

60-03-01-03. Restricted use pesticides. ~~Repealed effective 2012~~ The North Dakota restricted use pesticides shall be the same as those declared to be restricted use pesticides by the United States environmental protection agency and others declared at the discretion of the commissioner.

History: Effective August 1, 1978; amended effective February 1, 1982; October 4, 1990; July 1, 1992; July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

0-03-01-04. Prohibited pesticides. [Reserved]

60-03-01-05. Categories Classes of commercial applicator, public applicator, and dealer certifications. A commercial applicator, public applicator, or dealer certificate may be issued to individuals who pass a core certification examination and who have obtained Applicators may apply for certification in one or more of the following classes/categories:

1. **Agricultural pest control (plant and animal).** This category/class authorizes the application or sale use of pesticides intended for agricultural crop land, grasslands, and noncrop lands. This also includes the use of pesticides on animals, and animal facilities, and noncrop lands including, but not limited to, natural areas, fallow, non-producing agricultural lands and mines.
2. **Seed treatment.** This class/category authorizes the application or sale use of pesticides on/intended for agricultural crop seeds, other seeds, and vegetative seed stocks.
3. **Commodity and structural Ffumigation.** This category/class authorizes the use of fumigant pesticides intended for raw agricultural commodities, processed foods, nonfood commodities, transport vessels, commodity processing facilities, and commodity storage structures. includes

controlling pests in stored and transported agricultural crops, grain milling equipment, and storage facilities.

4. **Ornamental and turf pest control.** This category class authorizes the use of ~~includes pesticides to control pests in the production and maintenance of~~ intended for producing and maintaining ornamental trees, shrubs, flowers, and turf.
5. **Greenhouse.** This category class authorizes the use of ~~includes pesticides to control pests in a~~ intended for greenhouses.
6. **Right of way.** This category class authorizes the use of ~~includes pesticides in parking lots and rights-of-way for roads, power lines, telecommunication lines, to control pests in the maintenance of public roads, electric powerlines, pipelines, and railways, right of ways, parking lots, or~~ and in other similar areas.
7. **Public health pest control.** This category class authorizes the use of pesticides by ~~includes state, federal, or other government employees, or applicators working under government contract, using pesticides in public health programs for the management and control of pests having medical and~~ or other persons for public health purposes ~~impacts~~.
8. **Research and demonstration pest control.** This category class authorizes the use of pesticides by ~~includes individuals who demonstrate or apply pesticides for~~ for the purpose of education and ~~or research.~~ These would include county agent ~~extension specialists, state, federal, and commercial employees, plus other persons conducting research or demonstrating the proper application of restricted use pesticides.~~
9. **Home, industrial, and institutional pest control.** This category class authorizes the use of ~~includes commercial applicators using pesticides in, on, or around food-handling establishments, human dwellings, public or private institutions, warehouses, grain elevators, and any other structures or adjacent area, for the control of pests.~~
10. **Wood preservatives.** This category class authorizes the use of pesticides intended to preserve ~~includes commercial applicators who apply and treat with wood preservatives to preserve and protect wood, posts, and various lumber products from~~ pests.
11. **Vertebrate.** This category class authorizes the use of ~~includes commercial applicators who use pesticides intended to~~ for the control of certain pest vertebrate pests, such as rodents, certain predators, and bats not in or around structures.

12. Sewer root control~~Metam-sodium~~. This ~~category class~~ authorizes the use of pesticides intended to ~~includes commercial applicators who use or sell the restricted use pesticide metam-sodium (sodium N-methyldithiocarbamate dihydrate) for the purpose of controlling tree or other plant roots infesting sewer systems.~~

History: Amended effective February 1, 1982; October 1, 1990; November 1, 1991; March 1, 1996; August 1, 2000; March 1, 2003.

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

Law Implemented: NDCC 4-35-06, 4-35-08, 4-35-09, 4-35-12, 4-35-14

60-03-01-05.1. Commercial applicator, ~~or public applicator~~, and dealer certifications.

1. A commercial applicator, ~~or public applicator~~, or dealer, ~~or commercial applicator and dealer certificate shall be issued only to persons who in accordance with North Dakota Century Code section 4-35-09 or 4-35-12 or sections 4-35-09 and 4-35-12 respectively, only to those persons who successfully complete the certification examination established by the board, and who pay the certification fee.~~
2. ~~The board shall establish a certification examination which shall be administered by any North Dakota state university extension designate in accordance with North Dakota Century Code section 4-35-09 or 4-35-12. The examination shall be given by the North Dakota state university extension designate only to those persons who:~~
 - a. Are eighteen years of age or older;
 - b. Complete an application on forms and in the manner required by the board or its designee; and
 - c. Demonstrate competence in the ~~application, use, and handling of pesticides;~~ and
 - d. Pay the costs of training and education and any other fees.
32. Commercial applicator, ~~or public applicator~~, ~~or and dealer~~ ~~or commercial applicator and dealer certificates shall expire on April first following the third anniversary of the year of certification or recertification. Every commercially certified~~ A person holding these certificates may ~~shall be recertified by attending an board-approved seminar or by passing an board-approved examination, or both if required by the board, at least every third year.~~

3. A person holding a commercial applicator, public applicator, or dealer certificate who is unable to complete recertification requirements due to active duty military service may apply for an extension of their certification status for a time period not to extend beyond April first of the year following their return from active duty. The application must be in writing and accompanied by a certified copy of military orders or other trustworthy proof showing the date on which active duty military service began and ended. The board has discretion whether or not to grant the application.
4. A person holding an aerial core commercial or aerial core public applicator certificate shall attend a professional aerial applicators' support system (PAASS) program or other Board-approved program at least once every three years. Proof of attendance at a PAASS program or other Board-approved program must be received by the North Dakota state university extension service before recertification is issued.
45. Any person who fails an examination may retake it such examination after three or more days.
56. All commercial ~~or~~ and public applicators must be certified, under section 60-03-01-05, in the class that applies to how they use pesticides proper category of application.
67. All dealers must be certified, under section 60-03-01-05, in the proper eategory-class of the labels that applies to the pesticides they distribute.
78. If a the pesticide is labeled for more than one target pest, a the dealer only needs to be certified in one of the eategories-applicable classes.
9. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section.

History: Effective March 1, 2003; amended effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-08, 4-035-09, 4-35-10, 4-35-12, 4-35-14

60-03-01-05.2. Private applicator certification.

1. A private applicator certification shall be issued ~~in accordance with North Dakota Century Code section 4-35-14~~ only to these persons who:
 - a. Are eighteen years of age or older;
 - b. Complete an application on forms and in the manner required by the board or its designee; and

- c. Demonstrate competence in the application use of pesticides; and
 - d. Pay the costs of training and education and any other fees.
2. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section to competent private applicators. An individual seeking certification as a private applicator may demonstrate competence by:
- a. Attending an board-approved educational seminar, signing of a certificate of attendance, and passing a written examination administered by the board or its designee;
 - b. Completing a course of self-instruction and passing a written examination administered by the board or its designee; or
 - c. Passing the dealer, public applicator, or commercial applicator certification examination and submitting the passing grade to the board or its designee.
3. Certified private applicators ~~Persons purchasing, storing, or applying restricted use grain fumigants pesticides intended for use on agricultural commodities and in grain storage structures must be commercially trained and must pass a board-approved commodity and structural fumigation examination. At the option of the applicant upon successfully passing the examination, the certificate issued will be for either private or commercial application of restricted use fumigants. The fee for the private and commercial fumigation certification will be set by the North Dakota state university extension service.~~
34. Certified private applicators purchasing, storing, or applying restricted use fumigant pesticides for burrowing pest control must pass a board-approved vertebrate examination. The fee for the private vertebrate certification will be set by the North Dakota state university extension service.
54. ~~Every private applicator shall be recertified by attending an approved seminar or by taking an approved examination at least every third year. A certified private applicator must be recertified by attending an board-approved seminar or by taking passing an board-approved examination, or both if required by the board, at least every third year.~~
6. A person holding a private applicator certificate who is unable to complete recertification requirements due to active duty military service may apply for an extension of their certification status for a time period not to extend

beyond April first of the year following their return from active duty. The application must be in writing and accompanied by a certified copy of military orders or other trustworthy proof showing the date on which active duty military service began and ended. The board has discretion whether or not to grant the application.

75. Any person who fails an examination may retake such examination after three or more days. No more than three examinations may be given before requiring attendance at another initial training course.
8. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section.

History: Effective March 1, 2003; amended effective July 1, 2004.

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

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

60-03-01-05.3. Pesticide certification examination - Cheating.

1. An individual who seeks certification under section 60-03-01-05.1 or 60-03-01-05.2 may not, while taking a written examination, give or receive information or assistance to or from any other person, utilize the assistance of any electronic device capable of storing data, or consult any written materials unless expressly authorized in advance by the board or its designee. The written examination and any other writings made during the examination period must be provided to the board or its designee at the end of the examination period.
2. Cheating by an applicant in applying for or taking the examination may result in the invalidating of examination grades, expulsion from the examination room, disqualification from taking the examination for a specified period of time, and other penalties the board may impose. When the board believes that cheating has occurred, the applicant or certified individual must be given notice and an opportunity to be heard pursuant to North Dakota Century Code chapter 28-32 before imposing any penalties.

History: Effective July 1, 2004.

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

Law Implemented: NDCC 4-35-08, 4-35-09, 4-35-12, 4-35-14

60-03-01-05.4. Certification denial.

1. The board, or its designee, may refuse to issue a pesticide certification, including an applicant for reciprocal certification under North Dakota Century Code section 4-35-18, to an individual who has had that

individual's certification suspended or revoked in the past three years in any state or province or to an individual that has committed a documented violation of FIFRA or the pesticide regulations of any state, provincial, or tribal authority within the last three years.

2. The board, or its designee, may require an additional demonstration of applicator qualification if the applicator has had a license suspended or revoked or has otherwise had a history of pesticide violations.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-08, 4-35-09, 4-35-12, 4-35-14, 4-35-18

60-03-01-06. Pesticide mixing, ~~loading~~filling, and application - Storage Transportation - Disposal.

1. Mixing, ~~loading~~filling, and application.

- a. All pesticides shall must be used in accordance with the labeling.
- b. Pesticide applications shall must be made in a manner that prevents off-target discharges of pesticides.
- c. Pesticide application ~~or loading~~ equipment or equipment used to fill application equipment that is designed to draw water from surface water shall must have a properly functioning antisiphoning device attached to the inlet hose.
- d. Applications shall must not occur when the atmospheric conditions favor the off-target drift of pesticides or prevent the proper deposition of pesticides to the target area.
- e. Pesticides shall must be applied in a manner that minimizes the exposure to animals. Unless permitted by the labeling, an applicator shall take all reasonable precautions that will to prevent a pesticide from being applied if unprotected persons are present within the application site or are present in adjacent areas when off-target drift may occur.
- f. Pesticide applicators and persons assisting with an application shall follow all safety precautions as specified on the container-labeling.
- g. All equipment used in pesticide mixing, ~~loading~~filling application equipment and application must be operationally sound and properly calibrated to prevent adverse effects on the environment.

- h. Any commercial or public applicator who mixes, loads, fills, application equipment, or otherwise uses pesticides shall have immediate access to a spill kit at the loading-filling site, containing not less than two buckets, absorptive pillows, or another system for containing leaking nozzles or a pesticide spill. The spill kit requirement does not apply to a person using only who uses single containers of pre-mixed, ready-to-use pesticides.
- i. The product labelings, a legible reproduction of the labelings, or a specimen label of the pesticides ~~that are being applied~~ must be at the application site during the time of application. Aerial applicators must have a the labeling available at the loading-filling site.

2. Storage.

- a. All pesticides, except bulk pesticides, shall must be stored in their original container and in accordance with label recommendations. All labels of stored pesticides shall must be plainly visible. All pesticide containers must have a proper label affixed to them.
- b. All pesticides shall must be stored in dry, well-ventilated spaces, and in a manner that will not endanger humans, animals, or the environment, nor contaminate food, or feed, or seed, or any goods intended for consumer distribution, through a release or escape of pesticide products.
- c. If a storage area contains a floor drain, it must be sealed or self-contained.
- d. Pesticide storage areas containing products intended for distribution or use by commercial or public applicators and dealers must be marked at all entrances. Storage areas containing only hard surface disinfectants are exempt from this requirement.
- e. Label-specific safety equipment for all pesticides stored must be available at the immediate storage site.
- f. Pesticides ~~Stored pesticides~~ shall must be secured in a manner to that prevents children, unauthorized persons, or animals from gaining entry or access to the them stored pesticides. Security of a pesticide storage area is achieved when normal points of access are closed and locked while unattended and the structural integrity of the area prevents access by other than normal means.

3. Transportation.

- a. All pesticides, except bulk pesticides, shall must be transported in their original containers. All pesticides must be transported in a secure manner to avoid breakage of containers, spills, or any other manner of contamination.
- b. Pesticides shall must not be transported with foodstuffs, feed, or any other product or material so as to pose a hazard to humans, animals, or the environment.
- c. Pesticides in an unattended transport vehicle must be secured to prevent children, unauthorized persons, or animals from gaining access.
- d.e. Equipment contaminated ~~in the~~ while transporting of pesticides shall must be cleaned and decontaminated prior to any other use.

4. Disposal.

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

History: Amended effective April 15, 1985; October 1, 1990; July 1, 1992; May 1, 1994; March 1, 1996; March 1, 2003; July 1, 2004.

General Authority: NDCC 4-35-06

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

60-03-01-07. Recordkeeping – ~~Dealers and Commercial, or public and customprivate applicators and private applicatorsdealers.~~

1. **Dealers.** Every pesticide dealer shall keep separate, accurate, and complete records of all of the dealer's purchases and sales of restricted use pesticides and all pesticides used under section 18 (emergency exemption) and section 24-c (special local needs) of FIFRA. Dealers shall positively identify all purchasers of restricted use pesticides using any trustworthy proof of identification. If a restricted use pesticide is to be delivered to a person other than the certified applicator making the

purchase, the dealer must have a completed and signed authorization to receive restricted use pesticides form on file for the purchaser for the current year. The records shall ~~must~~ include the following for each pesticide purchased or sold:

a. Purchases.

- (1) Dealer's name and address.
- (2) Pesticide trade name and environmental protection agency registration number, if available.
- (3) Quantity of pesticide.
- (4) Date pesticide was shipped or received.
- (5) ~~Distributor's name~~ Name of the (person from whom the pesticide was received).

b. Sales.

- (1) Dealer's name and address and identification ~~of the~~ person making the sale.
- (2) Name, address, certification number, and signature of the private or commercial certified applicator making the purchase.
- (3) Date of sale.
- (4) ~~Trade name or common name and~~ environmental protection agency registration number, if available. quantity of pesticide sold.
- (5) Quantity of pesticide.
- ~~(6)(5)~~ Running Accurate inventory by product.
- ~~(7)(6)~~ Certification class category and expiration date of the certification.
- ~~(8)(7)~~ Intended application site or intended crop for all pesticides used under section 18 of FIFRA.

2. **Commercial or public applicators.** Commercial ~~or~~ and public applicators shall keep a record of all pesticide applications and of the use or disposal

of all pesticide rinsate. The record must be made within twenty- four hours of the pesticide application or the use or disposal of the pesticide rinsate. A copy of the records must be provided to the applicator's client as soon as possible, not to exceed 30 days, -or-unless the applicator must have has on file a signed letter giving the applicator permission to keep the records for the client from the client waiving the right to receive a copy. The record shall must include for each application:

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

- j. Description of equipment used in application.
 - k. Signature and Certification number of applicator, if any, and signature.
 - l. Right-of-way applicators must record weather conditions and geographic location in two-hour increments.
3. **Private applicators.** Private applicators shall keep a record of all restricted use, ~~section 18 exemptions, and special local needs pesticide applications.~~ The record must be made within twenty- four hours of the pesticide application or the use or disposal of the pesticide rinsate. The records must include for each application:
- a. Legal description of the land, grain bin identification ~~for fumigant or grain protectant applications,~~ or other description of where the pesticide was applied.
 - b. Start and completion Ttime of the pesticide application ~~was applied~~ (month, day, year, and hour ~~of the day~~).
 - c. Specific trade name ~~of the pesticide applied~~ and environmental protection agency registration number of the restricted use pesticide that was applied.
 - d. Amount of pesticide used, including:
 - (1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.
 - (2) Pounds [kilograms] or gallons [liters] Total amount of chemical tank mix applied per acre [.40 hectare].
 - e. Specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure to which the pesticide was applied.
 - f. Signature and Certification number of applicator, if any, and applicator signature. ~~Records made pursuant to this section shall be completed and made available for inspection on the day the pesticide is applied.~~

History: Amended effective October 1, 1990; May 1, 1994; March 1, 1996; March 1, 2003; July 1, 2004.

General Authority: NDCC 4-35-06

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

60-03-01-07.1. Report of loss records. Repealed effective 2012

~~60-03-01-07.1. Report of loss records.~~ Any applicator receiving alleged pesticide damage claims shall notify the claimant, by certified mail, return receipt requested, of the verified report of loss notification required by North Dakota Century Code sections 4-35-21.1, 4-35-21.4, and 4-35-21.5 and shall retain the return receipts and a photocopy of the notice for a period of three years.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-21

Law Implemented: NDCC 4-35-21, 4-35-21.1, 4-35-21.2

60-03-01-08. Unlawful acts. Repealed effective March 1, 2003.

~~60-03-01-09. Reports of pesticide accidents/incidents.~~ Any person who is involved in or causes a pesticide ~~accident~~incident that could results in adverse effects ~~to or humans, animals, or the environment~~ shall must file a report it to the commissioner. The report must be made within twenty-four hours after the ~~accident~~incident. The report may be filed by letter, ~~telephone,~~ or electronic mail at the address or number identified in subsection 4 of section 60-01-01-01. A telephone report is acceptable if followed within twenty-four hours by a letter or electronic mail report.

The report must contain:

1. The specific trade name of the pesticide.
2. The amount of pesticide or tank mix, or both.
3. The location of the ~~pesticide accident~~incident.
4. The time of ~~accident~~the incident (month, day, year, and hour).
5. The direction and estimated velocity of the wind and estimated temperature at the time of the ~~accident~~incident, if outdoors.
6. Actions taken to remedy the adverse effects on humans, animals, and the environment.
7. The name of and contact information for the person making the report.

History: Effective February 1, 1982; amended effective March 1, 1996; March 1, 2003.

General Authority: NDCC 4-35-2406

Law Implemented: NDCC 4-35-2406

~~60-03-01-10. Labeling and relabeling of bulk pesticides~~Identifying information for pesticide mixtures, custom blends, and bulk containers.

1. Any person ~~that who~~ produces a mixture of any quantity of pesticide, to be applied by another person, ~~and holds the mixture in inventory,~~ must have an environmental protection agency establishment number. The person making the mixture must supply the person applying the mixture with end-use labeling for each pesticide in the mixture. The end-use labeling must ~~have the~~ include the facilities environmental protection agency establishment number of the facility that supplies the mixture ~~printed on it.~~
2. The environmental protection agency establishment number of the person facility that supplied the pesticide, and end-use labeling, and the business name and physical address of the facility where the bulk storage container resides must be attached to bulk pesticide storage ~~containers~~ stanks.
3. The environmental protection agency establishment number of the repackager facility that supplied the pesticide, end-use labeling, and quantity of pesticide ~~repackaged~~ must accompany or be attached to the mobile bulk pesticide container.
4. Any person ~~that who~~ custom blends any quantity of pesticide to be applied by another person must ensure that end-use labeling for all pesticides in the blend accompanies the blend to the point of ~~end use~~ where the blend leaves that person's control. No environmental protection agency establishment number is required for the blending facilities.

History: Effective April 15, 1985; amended effective October 1, 1990; July 1, 1992; May 1, 1994; January 1, 1997; March 1, 2003.

General Authority: NDCC 4-35-06

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

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

1. ~~The~~ Transportation and storage of all bulk pesticides must be in compliance with the manufacturer's requirements.
2. ~~The~~ Transporting ation of bulk pesticides must meet comply with all applicable standards of state and United States department of transportation rules and regulations.
3. A bulk pesticide storage container must be made of materials approved by the registrant and so constructed to be compatible with the pesticide stored and the conditions of storage, including any specifications that may appear on the pesticide labels and labeling. The commissioner may approve or require materials other than those approved by the registrant.

4. A bulk storage container and loading areas must be constructed and located on a site in a manner so that pesticides will not contaminate the environment, such as streams and water supplies.
5. A permanent bulk storage container must be equipped with a locking withdrawal valve or must be stored in a secure locked area. The valves or storage area must be locked during nonbusiness hours or while unattended.
6. A bulk pesticide storage container that is going to be refilled with a different pesticide must be cleaned and rinsed according to both the ~~repackager's~~ facility's and manufacturer's agreed-upon written instructions and all former labeling must be removed.

60-03-01-11.1 Adoption of the environmental protection agency pesticide container regulations. The environmental protection agency pesticide container regulations effective as of August 17, 2011, as provided under title 40, Code of Federal Regulations, part 165 subparts A,B,C, and D, are hereby adopted by the board and incorporated by reference and made part of this title. Copies of title 40, Code of Federal Regulations, part 165 subparts A, B, C, and D, are available upon request by contacting the board at its inquiry address listed in section 60-01-01-01.

60-03-01-11.2 Permanent containment area; construction – inspection-maintenance – recordkeeping requirements.

17. An outdoor permanent containment area must be constructed of sufficient size and material so as to contain any spilled or discharged materials. Minimum containment capacity shall must be one hundred twenty-five percent of the single largest bulk pesticide storage container, or sufficient to recover and contain a volume of a four-inch rainfall, whichever is greater.
28. An indoor permanent containment area located within an enclosed structure must be constructed of sufficient size and material to contain any spilled or discharged materials, and approved by the pesticide registrant. Minimum containment capacity shall must be one hundred ten percent of the single largest bulk pesticide storage container.
3. A permanent containment area must not have a drain that exits the containment area.
4. A permanent containment area must be constructed to provide protection of appurtenances (hoses, pumps, valves, pipes, etc.) and stationary pesticide containers against damage from operating personnel and moving equipment.

5. Appurtenances, discharge outlets, or gravity drains must not be configured through the base or wall of the permanent containment structure, except for direct connections between adjacent structures. The configuration of appurtenances must allow easy observation of discharges.
6. Inspections of permanent containment areas, bulk pesticide containers within containment areas, and appurtenances must be completed at least monthly during periods when pesticides are being stored or dispensed.
7. Initial repairs on any damage, cracks, or gaps in permanent containment areas and bulk pesticide containers must begin within twenty four hours from when the problem is noticed. Completed repairs using materials approved by the registrant of the pesticides stored in the containment area or bulk pesticide container must be made within a reasonable time, taking into account factors such as the weather and the availability of cleanup materials, trained staff, and equipment. Additional pesticides must not be stored in the permanent containment area or bulk pesticide container until repairs are completed.
8. Records of inspection and maintenance for permanent containment areas and for bulk pesticide containers and their appurtenances must be kept for three years and must include the following:
 - a. Name of the individual conducting the inspection or maintenance;
 - b. Date the inspection or maintenance was conducted;
 - c. A description of the conditions found during the inspection; and
 - d. Specific maintenance performed.

History: Effective March 1, 2003; amended effective July 1, 2004.

General Authority: NDCC 4-35-06

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

60-03-01-12. Packaging and ~~Repackaging~~ requirements for liquid or dry bulk pesticides.

1. A person must obtain a repackaging agreement from the registrant prior to repackaging liquid or dry-bulk pesticides.

2. Repackaging mMust be performed at a facility with an environmental protection agency establishment number.
3. Repackaging Mmust use meters or scales, or both, compatible with the pesticide being repackaged.
4. Repackaging mMust be done in a permanent containment area with a primary shutoff valve or switch within immediate reach of the person who is engaged in the repackaging operation.
5. The repackaging area must be kept clean of clutter and not used as a storage area for items not immediately used for repackaging.
6. A spill kit must be located within fifty feet of an operational area.
7. During repackaging, Gclean up of any spilled ~~discharged pesticide or pesticide-containing materials~~ must be performed immediately after the occurrence and reported according to local, state, and federal guidelines.
8. During repackaging, Aa discharged pesticide or pesticide-containing material must be contained either by the permanent containment area itself, mitigated using a spill kit, or drained, pumped, or transferred to an additional impermeable, aboveground holding tank or reservoir until utilized or disposed of in compliance with applicable local, state, and federal laws. The holding tank or reservoir must be suitably constructed to prevent the release of pesticides or pesticide-containing materials to the environment.

History: Effective March 1, 2003.

General Authority: NDCC 4-35-06

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

60-03-01-13. Prohibitions. No person may:

1. ~~Package or r~~Repackage into a container unless the container is capable of holding, in undivided quantities, the capacity as specified by the environmental protection agency.
2. ~~Hold in inventory a mixture or custom blend of any quantity of pesticide, but rather, after producing a mixture or custom blend, it must be promptly delivered to the person requesting it.~~
23. Place bulk pesticide storage containers underground.
34. Repackage into improperly labeled containersis prohibited.

45. Repackage into containers not designated as refillable reusable by the registrant and container manufacturer ~~is prohibited~~.

History: Effective March 1, 2003.

General Authority: NDCC 4-35-06

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

CHAPTER 60-03-03 WORKER PROTECTION STANDARD

Section	
60-03-03-01	Scope and Purpose
60-03-03-02	Definitions
60-03-03-03	Adoption of Worker Protection Standard

60-03-03-01. Scope and purpose. This chapter contains a standard designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

60-03-03-02. Definitions. Any term used in this chapter has the same meaning as defined in title 40, Code of Federal Regulations, section 170.3, unless defined in North Dakota Century Code chapter 4-35, in which case the North Dakota Century Code definition governs.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

60-03-03-03. Adoption of worker protection standard. The environmental protection agency worker protection standard regulations effective as of December 12, 2008 ~~July 1, 2003~~, as provided under title 40, Code of Federal Regulations, part 170, ~~but excluding sections 40 CFR 170.104, 170.130, 170.135, 170.203, and 170.230~~, are hereby adopted by the board and incorporated by reference and made a part of this title. Copies of title 40, Code of Federal Regulations, part 170, are available upon request by contacting the board at its inquiry address listed in section 60-01-01-01.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06