CHAPTER 19-18
PESTICIDE REGISTRATION

19-18-01. Short title.
Repealed by S.L. 1995, ch. 219, § 52.

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 that will prevent, destroy, repel, or mitigate pests.
   b. In the case of a plant regulator, any ingredient 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 that will cause the leaves or foliage to drop from a plant.
   d. In the case of a desiccant, any ingredient 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 agriculture commissioner.
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.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.
7. "Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating pests but does not 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 inter-relationships 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 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 any, 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 must contain 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 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; or
    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 a state or federal agency, state agricultural experiment station, or state agricultural college.
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; and
    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 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 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 commissioner;
        (6) The labeling does not contain a statement of the use classification under which the product is registered if the product is a restricted use pesticide;
        (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; and
            (c) The net weight or measure of the content;

(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 with 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 is injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying 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 this chapter.
28. "Restricted use pesticides" means any pesticide formulation that is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the commissioner pursuant to section 19-18-05.

29. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal that the 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 that grows where not wanted.

19-18-02.1. Environment and rangeland protection fund.

The environment and rangeland protection fund is a special fund in the state treasury. The moneys in this fund may be used for rangeland improvement projects and to address issues relating to harmonization of crop protection product standards. The rangeland improvement projects may include noxious weed control; ground water testing, analysis, protection, and improvement; analysis of food products for residues of pesticides and other materials; and analysis and disposal of unusable pesticides and pesticide containers.

19-18-02.2. Advisory board - Creation - Duties.

Repealed by S.L. 2003, ch. 186, § 6.

19-18-03. Prohibited acts.

No person may distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

1. Any pesticide 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 commissioner, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.
2. Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, or in a container repackaged by a facility or person with a federal environmental protection agency issued establishment number, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required labeling information on the immediate container cannot be clearly read.
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 that the commissioner, after investigation of and after public hearing on the necessity for the action for the protection of the public health and the feasibility of the coloration or discoloration, by regulation, requires to be distinctly colored or discolored; unless it has been so colored or discolored. The 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 commissioner determines that the coloring or discoloring for the use or uses is not necessary for the protection of the public health.
4. Any pesticide which is adulterated or misbranded, or any device which is misbranded.
5. No person may detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter.

6. No person may use for the person's own advantage or reveal other than in response to a proper subpoena, except to a physician or other qualified person for use in the preparation of an antidote, any information relative to the formula of any product acquired by authority of this chapter.

19-18-04. Registration - Fees.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
   a. Give the name and address of each manufacturer or distributor.
   b. Give the name and brand of each product to be registered.
   c. Be accompanied by a current label of each product to be registered.
   d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit the registration fee for each registered product to the environment and rangeland protection fund.
   e. Be accompanied by a material safety data sheet for each product to be registered.
2. The 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 commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.
3. Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership. 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 thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.
4. 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.

19-18-04.1. Reporting requirements.

Upon request of the 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 within thirty days after receiving the commissioner's request. 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.

19-18-04.2. Protection of trade secrets.

1. Requirements. In submitting data required by this chapter, the applicant may:
   a. Clearly mark any portions that in the applicant's opinion are trade secrets or commercial or financial information; and
   b. Submit the marked material separately from other material.
2. Information revealed. After consideration of the applicant's request submitted under subsection 1, the commissioner may not make any information public which in the 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 commissioner.

3. Notification. If the commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure under this section, the commissioner shall notify the applicant or registrant by certified mail. The 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.

19-18-05. Determinations - Rules - Uniformity.

The commissioner, after opportunity for a hearing, may:

1. 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. Determine whether pesticides are highly toxic to man and whether the use thereof should be restricted.
3. Determine standards of coloring or discoloring for pesticides and to subject pesticides to the requirements of subsection 3 of section 19-18-03.

The commissioner may adopt appropriate rules for carrying out this chapter, including rules providing for the collection and examination of samples of pesticides or devices, and also may adopt such 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.

19-18-06. Enforcement.

The examination of pesticides or devices must be made under the direction of the commissioner for the purpose of determining whether the pesticides or devices comply with the requirements of this chapter. If it appears from the examination that a pesticide or device fails to comply with the provisions of this chapter and the commissioner contemplates instituting criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to the person. Any person so notified must be given an opportunity to present the person's views, either orally or in writing, with regard to the contemplated proceedings and if thereafter in the opinion of the commissioner it appears that the chapter has been violated by the person, then the 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 the article. This chapter does not require the commissioner to report for prosecution or for the institution of libel proceedings minor violations of the chapter whenever the 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 violation is reported shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction without delay. The commissioner, by publication in the manner the commissioner prescribes, shall give notice of all judgments entered in actions instituted under the authority of this chapter.

19-18-06.1. Stop-sale orders.

The commissioner may issue and enforce a stop-sale order to the owner or custodian of any pesticide when the 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 commissioner. The owner or custodian of 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.

19-18-07. Exemptions.

The penalties provided for violations of section 19-18-03 do not apply to:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the commissioner to copy all records showing the transactions in and movement of the articles.
2. Public officials of this state and the federal government engaged in the performance of their official duties.
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.
4. A person using, distributing, selling, or offering for sale an unregistered pesticide for which the United States environmental protection agency has granted an emergency exemption for at least one use in North Dakota under section 18 of the federal Act.

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

19-18-08. Penalties.

Any person violating this chapter is guilty of an infraction. In any case in which a registrant was issued a warning by the commissioner pursuant to this chapter, the registrant is, upon violating 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 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 commissioner through an administrative hearing pursuant to chapter 28-32.

19-18-09. Seizures.

Any pesticide or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state is liable to be proceeded against in any proper court of jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation:

1. In the case of a pesticide:
   a. If it is adulterated or misbranded;
   b. If it has not been registered under the provisions of section 19-18-04;
   c. If it fails to bear on its label the information required by this chapter; or
   d. If it is a white powder pesticide and is not colored as required under this chapter.
2. In the case of a device, if it is misbranded. If the pesticide is condemned, it must, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such pesticide is sold, less legal costs, must be paid to the state treasurer. The pesticide may not be sold contrary to the provisions of this chapter. Upon payment of cost and execution and delivery of a good and sufficient bond conditioned that the pesticide shall not be disposed of unlawfully, the court may direct that said pesticide be delivered to the owner thereof for relabeling or reprocessing as the case may be. When a decree of condemnation is entered against the pesticide, court costs and fees and storage and other proper expenses must be awarded against the person, if any, intervening as claimant of the pesticide.

19-18-10. Delegation of duties.

All authority vested in the commissioner by virtue of this chapter may with like force and effect be executed by the employees of the commissioner as the commissioner may from time to time designate for this purpose.

19-18-11. Cooperation.

The 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 this chapter and securing uniformity of regulations.

19-18-12. Experimental use permits.

Provided the state is authorized by the administrator of the environmental protection agency to issue experimental use permits, the commissioner may:

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

19-18-13. Minimum-risk pesticide - Certificate of exemption.

1. Section 19-18-03 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act [Pub. L. 100-532; 102 Stat. 2654; 7 U.S.C. 136 et seq.], provided the person has obtained a certificate of exemption from the commissioner.
2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
   a. The name and address of the product's manufacturer or distributor;
   b. The name and brand name of the product;
   c. A current label for the product; and
   d. A fee equal in amount to the fee set under section 19-18-04 for the registration of a pesticide.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.
4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.