ARTICLE 60-03
PESTICIDES

Chapter
60-03-01 Pesticide, Distribution, Handling, and Use
60-03-02 Minor Use Pesticide Fund [Repealed]
60-03-03 Worker Protection Standard

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

Section
60-03-01-01 Scope [Repealed]
60-03-01-02 Definitions
60-03-01-03 Restricted Use Pesticides [Repealed]
60-03-01-04 Prohibited Pesticides [Reserved]
60-03-01-05 Classes of Commercial Applicator, Public Applicator, and Dealer Certifications
60-03-01-05.1 Commercial Applicator, Public Applicator, and Dealer Certifications
60-03-01-05.2 Private Applicator Certification
60-03-01-05.3 Pesticide Certification Examination - Cheating
60-03-01-05.4 Certification Denial
60-03-01-06 Pesticide Mixing, Filling, and Application - Storage - Transportation - Disposal
60-03-01-07 Recordkeeping - Commercial, Public, and Private Applicators and Dealers
60-03-01-07.1 Report of Loss Records [Repealed]
60-03-01-08 Unlawful Acts [Repealed]
60-03-01-09 Reports of Pesticide Incidents
60-03-01-10 Identifying Information for Pesticide Mixtures, Custom Blends, and Bulk Containers
60-03-01-11 Storage and Transportation of Bulk Pesticides
60-03-01-11.1 Adoption of the Environmental Protection Agency Pesticide Container Regulations
60-03-01-11.2 Permanent Containment Area - Construction - Inspection - Maintenance - Recordkeeping Requirements
60-03-01-12 Repackaging Requirements for Bulk Pesticides
60-03-01-13 Prohibitions

60-03-01-01. Scope.

Repealed effective January 1, 2013.

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. "Agricultural plants" means any plants grown or maintained for commercial or research purposes.

2. "Board" means the North Dakota pesticide control board created pursuant to North Dakota Century Code section 4-35-02.

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

4. "Bulk pesticide facility" means any place used to handle or store bulk pesticides.

5. "Certification" means recognition by the board or its designee that a person is competent and thus authorized as a:

    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.

6. "Commissioner" means the North Dakota agriculture commissioner.

7. "Compensation" means monetary payment for a specific service.

8. "Competent" means qualified to perform functions associated with pesticide applications, the degree of 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, proper application techniques, recordkeeping requirements, worker protection standards, and emergency response and being able to identify workplace hazards.

9. "Custom blend" means any diluted mixture of pesticide prepared by a dealer to the specifications of the end-user and not held in inventory.

10. "End-use labeling" means the written, printed, or graphic matter on, attached to, or accompanying the pesticide or device or any of its containers or wrappers.

11. "End-user" means the person who applies the pesticide.

12. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as codified and amended at 7 U.S.C. 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.

15. "Handling" means the mixing, loading, application, repackaging, storage, transportation, distribution, sale, purchase, or disposal of pesticides.

16. "Mixture" means any pesticide combined with fertilizer, seed, or other substance.

17. "Mobile container" means a container used to transport pesticides.

18. "Operational area" means:

    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 registrant, unless the commissioner approves or requires material other than that approved by the registrant; or

b. An area that has a berm or curb or is otherwise designed to contain discharges that may occur while handling pesticides or pesticide-containing materials.

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.

23. "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.

24. "Spill kit" means a portable kit or other equipment that is designed to recover, minimize, contain, or absorb 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 [18.93 liters] of liquid;

b. One or more impervious containers with a combined minimum capacity of ten gallons [37.85 liters]; 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 mixing, filling application equipment, applying, storing, distributing, and disposing of a pesticide.

27. "Use of a pesticide in a manner inconsistent with its labeling" means using 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; January 1, 2013.
General Authority: NDCC 4-35-06
Law Implemented: NDCC 4-35-06

60-03-01-03. Restricted use pesticides.

Repealed effective January 1, 2013.

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

60-03-01-05. 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 certification in one or more of the following classes:

1. **Agricultural pest control (plant and animal).** This class authorizes the use of pesticides intended for agricultural crop land, grasslands, animals, animal facilities, and noncrop lands, including natural areas, fallow, nonproducing agricultural lands, and mines.

2. **Seed treatment.** This class authorizes the use of pesticides intended for agricultural crop seeds, other seeds, and vegetative seed stocks.

3. **Commodity and structural fumigation.** This 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.

4. **Ornamental and turf pest control.** This class authorizes the use of pesticides intended for producing and maintaining ornamental trees, shrubs, flowers, and turf.

5. **Greenhouse.** This class authorizes the use of pesticides intended for greenhouses.

6. **Right of way.** This class authorizes the use of pesticides in parking lots and rights of way for roads, powerlines, telecommunication lines, pipelines, and railways, and in other similar areas.

7. **Public health pest control.** This class authorizes the use of pesticides by government employees, applicators working under government contract, or other persons for public health purposes.

8. **Research and demonstration pest control.** This class authorizes the use of pesticides by individuals for the purpose of education or research. These would include county agents, 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 class authorizes the use of pesticides in or around food-handling establishments, human dwellings, public or private institutions, warehouses, grain elevators, and any other structures.

10. **Wood preservatives.** This class authorizes the use of pesticides intended to preserve lumber products.

11. **Vertebrate.** This class authorizes the use of pesticides intended to control vertebrate pests, such as rodents, certain predators, and bats not in or around structures.

12. **Sewer root control.** This class authorizes the use of pesticides intended to control 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; January 1, 2013.
General Authority: NDCC 4-35-06
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, public applicator, and dealer certifications.

1. A commercial applicator, public applicator, or dealer certificate shall be issued only to 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;

   c. Demonstrate competence in the use of pesticides; and

   d. Pay the costs of training and education and any other fees.

2. Commercial applicator, public applicator, and dealer certificates shall expire on April first following the third anniversary of the year of certification or recertification. A person holding these certificates may be recertified by attending a board-approved seminar or by passing a 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 the person's certification status for a time period not to extend beyond April first of the year following the person's 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 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.

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

6. All commercial and public applicators must be certified, under section 60-03-01-05, in the class that applies to how they use pesticides.

7. All dealers must be certified, under section 60-03-01-05, in the class that applies to the pesticides they distribute.

8. If a pesticide is labeled for more than one target pest, a dealer only needs to be certified in one of the 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; January 1, 2013.
General Authority: NDCC 4-35-06
Law Implemented: NDCC 4-35-08, 4-35-09, 4-35-10, 4-35-12

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

1. A private applicator certification shall be issued only to 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;

   c. Demonstrate competence in the 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. An individual seeking certification as a private applicator may demonstrate competence by:

   a. Attending a 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 purchasing, storing, or applying restricted use fumigant pesticides intended for use on agricultural commodities and in grain storage structures must pass a board-approved commodity and structural fumigation examination. The fee for the private fumigation certification will be set by the North Dakota state university extension service.

4. 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.

5. A certified private applicator must be recertified by attending a board-approved seminar or by passing a 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 the person's certification status for a time period not to extend beyond April first of the year following the person's 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 to grant the application.

7. 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; January 1, 2013.
General Authority: NDCC 4-35-06
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; amended effective January 1, 2013.
General Authority: NDCC 4-35-06
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; amended effective January 1, 2013.
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, filling, and application - Storage - Transportation - Disposal.

1. **Mixing, filling, and application**.

   a. All pesticides must be used in accordance with the labeling.

   b. Pesticide applications must be made in a manner that prevents off-target discharges of pesticides.

   c. Pesticide application equipment or equipment used to fill application equipment that is designed to draw water from surface water must have a properly functioning antisiphoning device attached to the inlet hose.

   d. Applications 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 must be applied in a manner that minimizes exposure to animals. Unless permitted by the labeling, an applicator shall take all reasonable precautions 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 labeling.

   g. All equipment used in pesticide mixing, 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, fills application equipment, or otherwise uses pesticides shall have immediate access to a spill kit at the filling site. The spill kit requirement does not apply to a person using only ready-to-use pesticides.

   i. The labeling, a legible reproduction of the labeling, or a specimen labeling of the pesticides being applied must be at the application site during the application. Aerial applicators must have the labeling available at the filling site.

2. **Storage**.

   a. All pesticides, except bulk pesticides, must be stored in their original container and in accordance with labeling recommendations. All labeling of stored pesticides must be plainly visible. All pesticide containers must have a proper label affixed to them.

   b. All pesticides must be stored in dry, well-ventilated spaces, and in a manner that will not endanger humans, animals, or the environment, nor contaminate food, feed, 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. Stored pesticides must be secured in a manner that prevents children, unauthorized persons, or animals from gaining entry or access to them. 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, 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 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. Equipment contaminated while transporting pesticides must be cleaned and decontaminated prior to any other use.

4. **Disposal**.

a. Empty pesticide containers must be stored in accordance with label recommendations and in a manner that will not endanger humans, animals, or the environment.

b. Empty nonreturnable pesticide containers must be triple-rinsed or the equivalent on the day of their use. Secondary use of such containers that would endanger humans, animals, or the environment is prohibited.

c. Pesticide containers must be disposed of in accordance with labeling directions and in a manner 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; January 1, 2013.
General Authority: NDCC 4-35-06
Law Implemented: NDCC 4-35-06, 4-35-20

60-03-01-07. Recordkeeping - Commercial, public, and private applicators and dealers.

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 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) 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 certified applicator making the purchase.

(3) Date of sale.

(4) Trade name and environmental protection agency registration number, if available.

(5) Quantity of pesticide.

(6) Accurate inventory by product.

(7) Certification class and expiration date of the certification.

(8) Intended application site or intended crop for all pesticides used under section 18 of FIFRA.

(9) Dealers shall positively identify all purchasers of restricted use pesticide products.

2. **Commercial or public applicators**. Commercial 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 record must be provided to the applicator's client as soon as possible, not to exceed thirty days, unless the applicator has on file a signed letter from the client waiving the right to receive a copy. The record 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. Start and completion time of the pesticide application (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 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 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) 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 number of applicator, if any.

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 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 record must include for each application:

a. Legal description of the land, grain bin identification, or other description of where the pesticide was applied.

b. State and completion time of the pesticide application (month, day, year, and hour).

c. Specific trade name 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] of 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.

History: Amended effective October 1, 1990; May 1, 1994; March 1, 1996; March 1, 2003; July 1, 2004; January 1, 2013.
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 January 1, 2013.

60-03-01-08. Unlawful acts.

Repealed effective March 1, 2003.

60-03-01-09. Reports of pesticide incidents.

Any person who is involved in or causes a pesticide incident that could result in adverse effects to humans, animals, or the environment must report it to the commissioner. The report must be made within twenty-four hours after the incident. The report may be filed by letter 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 incident.

4. The time of the incident (month, day, year, and hour).

5. The direction and estimated velocity of the wind and estimated temperature at the time of the 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; January 1, 2013.
General Authority: NDCC 4-35-06
Law Implemented: NDCC 4-35-06

60-03-01-10. Identifying information for pesticide mixtures, custom blends, and bulk containers.

1. Any person who produces a mixture of any quantity of pesticide, to be applied by another person 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 include the environmental protection agency establishment number of the facility that supplied the mixture.

2. The environmental protection agency establishment number of the facility that supplied the pesticide, 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.

3. The environmental protection agency establishment number of the facility that supplied the pesticide, end-use labeling, and quantity of pesticide must accompany or be attached to the mobile bulk pesticide container.

4. Any person 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 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; January 1, 2013.
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. Transporting and storing bulk pesticides must comply with the manufacturer's requirements.

2. Transporting bulk pesticides must comply with all applicable 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 label 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 facility's and manufacturer's agreed-upon written instructions and all former labeling must be removed.

History: Effective March 1, 2003; amended effective July 1, 2004; January 1, 2013.
General Authority: NDCC 4-35-06
Law Implemented: NDCC 4-35-06, 4-35-15

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.

History: Effective January 1, 2013.
General Authority: NDCC 4-35-06
Law Implemented: NDCC 4-35-06, 4-35-15

60-03-01-11.2. Permanent containment area - Construction - Inspection - Maintenance - Recordkeeping requirements.

1. 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 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.

2. 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 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 including 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 January 1, 2013.
General Authority: NDCC 4-35-06
Law Implemented: NDCC 4-35-06, 4-35-15

60-03-01-12. Repackaging requirements for bulk pesticides.

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

2. Repackaging must be performed at a facility with an environmental protection agency establishment number.

3. Repackaging must use meters or scales, or both, compatible with the pesticide being repackaged.

4. Repackaging must be done in a permanent containment area with a primary shutoff valve or switch within immediate reach of the person who is repackaging.

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, clean up of any 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, a discharged pesticide or pesticide-containing material must be contained by the permanent containment area, 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; amended effective January 1, 2013.
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. Repackaging 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.

3. Place bulk pesticide storage containers underground.

4. Repackage into improperly labeled containers.

5. Repackage into containers not designated as refillable by the registrant and container manufacturer.

History: Effective March 1, 2003; amended effective January 1, 2013.
General Authority: NDCC 4-35-06
Law Implemented: NDCC 4-35-06, 4-35-15, 4-35-20