

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2027

Introduced by

Legislative Management

(Agriculture and Natural Resources Committee)

1 A BILL for an Act to create and enact chapters 4.1-23, 4.1-33, 4.1-34, 4.1-35, 4.1-36, 4.1-37,
2 4.1-38, 4.1-39, and 4.1-40 of the North Dakota Century Code, relating to revisions of agriculture
3 laws regarding plant pests, pesticides, chemigation regulation, pesticide container disposal,
4 anhydrous ammonia facilities, anhydrous ammonia risk management, crop protection products,
5 and the fertilizer and soil conditioner law; and to provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** Chapter 4.1-23 of the North Dakota Century Code is created and enacted as
8 follows:

9 **4.1-23-01. Definitions.**

10 In this chapter, unless the context or subject matter otherwise requires:

- 11 1. "Certificate" means a document issued or authorized by the commissioner indicating a
12 regulated article is not contaminated with a pest.
- 13 2. "Commissioner" means the agriculture commissioner or the commissioner's
14 authorized representative.
- 15 3. "Host" means any plant or plant product upon which a pest is dependent for
16 completion of any portion of its life cycle.
- 17 4. "Infested" means infected with a quantity of pests or so exposed to a quantity of pests
18 that it would be reasonable to believe that potential for harm or threat to the health of
19 the host exists.
- 20 5. "Move" means to ship, offer for shipment, receive for transportation, carry, or
21 otherwise transport, or allow to be transported.
- 22 6. "Permit" means a document issued or authorized by the commissioner to provide for
23 the movement of regulated articles to restricted destinations for limited handling,
24 utilization, or processing.

- 1 7. "Person" means any individual, corporation, limited liability company, company,
2 society, or association, or other business entity.
- 3 8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism
4 that can cause damage to a plant or part of a plant or any processed, manufactured,
5 or other product of plants.
- 6 9. "Phytosanitary certificate" means an international document issued or authorized by
7 the commissioner stating that a plant or plant product is considered free from
8 quarantine pests and practically free from injurious pests and that the plant or plant
9 product is considered to conform with the current phytosanitary regulations of the
10 importing country.
- 11 10. "Plant" means any part of a plant, tree, aquatic plant, plant product, plant material,
12 shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting,
13 scion, bud, graft, fruit pit, or agricultural commodity.
- 14 11. "Regulated article" means any article of any character as described in a quarantine
15 carrying or capable of carrying the plant pest against which the quarantine is directed.

16 **4.1-23-02. Administration - Rulemaking authority.**

17 The commissioner shall administer this chapter. The commissioner shall employ an
18 individual who has a baccalaureate degree in entomology, plant pathology, or biological
19 sciences. The commissioner may adopt rules to carry out this chapter.

20 **4.1-23-03. Authority for control measures.**

21 The commissioner, either independently or in cooperation with political subdivisions,
22 farmers' associations or similar organizations, individuals, federal agencies, or agencies of other
23 states, is authorized to carry out operations or measures to locate, suppress, control, eradicate,
24 prevent, or retard the spread of pests with the consent of the owners of the property involved.

25 **4.1-23-04. Authority for plant quarantine.**

- 26 1. The commissioner is authorized to quarantine this state or any portion of the state if
27 the commissioner determines that quarantine is necessary to prevent or retard the
28 spread of a pest within or from this state, and to quarantine any other state or portion
29 of another state if the commissioner determines a pest exists in another state and a
30 quarantine is necessary to prevent or retard the spread of the pest into this state.
31 Before determining that a quarantine is necessary, the commissioner, after due notice

1 to interested parties, shall hold a public hearing under rules adopted by the
2 commissioner.

3 2. Any interested party may appear and be heard either in person or by attorney at the
4 public hearing, provided, the commissioner may impose a temporary quarantine for a
5 period not to exceed ninety days during which time a public hearing, as provided for in
6 this section, must be held if it appears the quarantine may require more than the
7 ninety-day period to prevent or retard the spread of the pest. The commissioner shall
8 give notice of the quarantine in those newspapers in the quarantined area selected by
9 the commissioner. The commissioner may limit the application of the quarantine to the
10 infested portion of the quarantined area and appropriate environs, to be known as the
11 regulated area, and, without further hearing, may extend the regulated area to include
12 additional portions of the quarantined area;

13 a. Upon publication of a notice in newspapers in the quarantined area selected by
14 the commissioner; or

15 b. By direct written notice to those concerned.

16 3. Following establishment of the quarantine, a person may not move any regulated
17 article described in the quarantine or move the pest against which the quarantine is
18 established, within, from, into, or through this state contrary to rules adopted by the
19 commissioner. Notice of the rules must be published in newspapers in the quarantined
20 area selected by the commissioner.

21 4. The rules may restrict the movement of the pest and any regulated articles from the
22 quarantined or regulated area in this state into or through other parts of this state or
23 other states and from the quarantined or regulated area in other states into or through
24 this state. The rules may impose inspections, disinfections, certifications, permits, and
25 other requirements as the commissioner deems necessary to effectuate the purposes
26 of this chapter.

27 **4.1-23-05. Authority for abatement and emergency measures.**

28 If the commissioner finds any article that is infested or reasonably believed to be infested or
29 a host or pest exists on any premise or is in transit in this state, the commissioner, upon giving
30 notice to the owner or the owner's agent in possession of the host or pest, may seize,
31 quarantine, treat, or otherwise dispose of such pest, host, or article in the manner as the

1 commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the
2 spread of the pest. The commissioner may order the owner or agent to treat or dispose of the
3 pest, host, or article. If large areas or metropolitan areas, involving many people, are to be
4 treated, notice may be given through newspaper, radio, or other news media. A notice must
5 prominently appear, at least ten days prior to treatment, in at least three issues of a daily paper
6 having local coverage.

7 **4.1-23-06. Authority for inspections - Warrants.**

- 8 1. The commissioner, with a warrant or the consent of the owner, may make reasonable
9 inspection of any premises in this state and any property in or on the premises. The
10 commissioner, without a warrant with the assistance of any law enforcement agency
11 may stop and inspect, in a reasonable manner, any means of transportation moving in
12 this state upon probable cause to believe it contains or carries any pest, host, or other
13 article subject to this chapter. The commissioner may make any other reasonable
14 inspection of any premises or means of transportation for which no warrant is required
15 under the Constitution of the United States and the Constitution of North Dakota.
16 2. District courts in this state may issue warrants for inspections of property or
17 transportation upon a showing by the commissioner of probable cause to believe there
18 exists in or on the property or transportation to be inspected a pest, host, or other
19 article subject to this chapter.

20 **4.1-23-07. Cooperation.**

- 21 1. The commissioner is authorized to cooperate with any agency of the federal
22 government in operations and measures the commissioner deems necessary to
23 suppress, control, eradicate, prevent, or retard the spread of any plant pest including
24 the right to expend state funds on federal lands.
25 2. The commissioner is authorized to cooperate with agencies of adjacent states in such
26 operations and measures the commissioner deems necessary to locate; to suppress,
27 control, eradicate, prevent, or retard the spread of any pest, provided, that the use of
28 funds appropriated to carry out this chapter, for operations in adjacent states, must be
29 approved in advance by the governor or the governor's designee.

30 **4.1-23-08. Penalties.**

- 31 1. It is a class A misdemeanor for:

1 a. Any person to violate any provision of this chapter or use without authority any
2 certificate or permit or other document provided for in this chapter or in the rules
3 of the commissioner provided for in this chapter;

4 b. Any person to knowingly move any regulated article into this state from any
5 quarantined area of any other state, when the article has not been treated or
6 handled under provisions of the quarantine and rules at the point of origin.

7 2. In addition to criminal sanctions, a person found guilty of violating this chapter or rules
8 is subject to a civil penalty not to exceed five thousand dollars for each violation. The
9 civil penalty may be adjudicated by the courts or by the commissioner through an
10 administrative hearing pursuant to chapter 28-32. The commissioner may maintain an
11 appropriate civil action in the name of the state against any person violating this
12 chapter.

13 **4.1-23-09. Authority for compensation.**

14 The commissioner may authorize the payment of reasonable compensation to growers in
15 infested areas for not planting host crops pursuant to instructions issued by the commissioner
16 prior to the planting season, for losses resulting from the destruction of any regulated articles. A
17 payment may not be authorized for the destruction of regulated articles moved in violation of
18 any rule or any host planted contrary to instructions issued by the commissioner. Any
19 compensation payment program authorized by the commissioner must be approved by the
20 legislative assembly.

21 **4.1-23-10. Authority for local pest control and regulations.**

22 The governing body of any political subdivision, by ordinance or resolution, may adopt and
23 enforce regulations to control and prevent the spread of pests. If state rules are in effect, any
24 similar local regulations must be approved by the commissioner. State rules must be in effect if
25 the commissioner finds that adequate measures are not being taken by the political subdivision.
26 The commissioner shall notify the appropriate officials of the political subdivision before any
27 action is taken by the commissioner. The rules may authorize appropriate officers and
28 employees to enter and inspect any public or private place which might harbor pests.

29 **4.1-23-11. Authority for financing local control programs - County pest coordinator.**

30 1. The board of county commissioners may appropriate money for the control of pests
31 under this chapter. If state funds are involved, the money must be expended according

1 to control plans approved by the commissioner. The board of county commissioners
2 shall determine the portion, if any, of control program costs to be paid by the county.
3 Costs of the control program may be paid from revenues derived from general fund
4 levy authority of the county or from the county noxious weed control levy authority
5 under section 4.1-47-14.

6 2. The board of county commissioners for any county shall designate an individual to
7 serve as county pest coordinator. The county pest coordinator shall administer local
8 and private funds in cooperation with state and federal pest control programs. When
9 state funds are involved, the county pest coordinator shall submit county and township
10 control plans to the agriculture commissioner for approval.

11 **4.1-23-12. Authority for domestic and export certification.**

12 The commissioner may inspect and certify any plant and plant product, when offered for
13 export or shipment from within the state and to certify, to shippers and interested parties as to
14 the freedom of the products from injurious pests according to the phytosanitary requirements of
15 other states and foreign countries. Authority for inspection and certification under this section is
16 not limited to plants defined in section 4.1-23-01. The commissioner may make reasonable
17 charges and use any means necessary to accomplish this objective. A portion of the fees
18 collected may be deposited in the commissioner's operating fund equivalent to the amount that
19 the United States department of agriculture assesses the department for federal plant export
20 certificates issued by the commissioner. A certificate may be withheld or not issued if the
21 product does not meet phytosanitary or import requirements and if all state licensing and
22 bonding requirements have not been met. Consignee names and addresses on phytosanitary
23 certificates are confidential.

24 **SECTION 2.** Chapter 4.1-33 of the North Dakota Century Code is created and enacted as
25 follows:

26 **4.1-33-01. Definitions.**

27 As used in this chapter:

- 28 1. "Animal" means all vertebrate and invertebrate species, including humans and other
29 mammals, birds, fish, and shellfish.
30 2. "Applicator" means any person who applies a pesticide to land.

- 1 3. "Certified applicator" means any individual who is certified under this chapter to
2 purchase or use a restricted use pesticide.
- 3 4. "Commercial applicator" means a person who, by contract or for hire, engages in the
4 business of applying pesticides for compensation.
- 5 5. "Defoliant" means any substance or mixture of substances intended to cause the
6 leaves or foliage to drop from a plant, with or without causing abscission.
- 7 6. "Desiccant" means any substance or mixture of substances intended to artificially
8 accelerate the drying of plant tissue.
- 9 7. "Device" means any instrument or contrivance, other than a firearm, which is intended
10 for trapping, destroying, repelling, or mitigating any pest or any other form of plant or
11 animal life, other than human and other than bacteria, virus, or other micro-organism
12 on or in living humans or other living animals, but not including equipment used for the
13 application of pesticides when sold separately from pesticide.
- 14 8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply
15 pesticides in this state.
- 16 9. "Environment" includes water, air, land, and all plants and humans and other animals
17 living therein, and the interrelationships that exist among them.
- 18 10. "Equipment" means any type of ground, water, or aerial equipment or contrivance
19 using motorized, mechanical, or pressurized power and used to apply any pesticide on
20 land and anything that may be growing, inhabiting, or stored on or in that land. The
21 term does not include any pressurized hand-held household apparatus used to apply
22 any pesticide, or any equipment or contrivance of which the individual who is applying
23 the pesticide is the source of power or energy to make the pesticide application.
- 24 11. "Fungus" means any non-chlorophyll-bearing thallophytes, that is, any
25 non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for
26 example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living
27 humans or other living animals, and except those on or in processed food, beverages,
28 or pharmaceuticals.
- 29 12. "Insect" means any of the numerous small invertebrate animals generally having the
30 body more or less obviously segmented, for the most part belonging to the class of

- 1 insecta, comprising six-legged, usually winged forms, and to other allied classes of
2 arthropods whose members are wingless and usually have more than six legs.
- 3 13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide
4 or device or any of its containers or wrappers.
- 5 14. "Labeling" means the label and all other written, printed, or graphic matter:
6 a. Accompanying the pesticide or device; or
7 b. To which reference is made on the label or in literature accompanying or referring
8 to the pesticide, except when accurate nonmisleading references are made to
9 current official publications of the board, the United States environmental
10 protection agency, the United States departments of agriculture and interior, the
11 United States department of health and human services, state agricultural
12 colleges, and other similar federal or state institutions or agencies authorized by
13 law to conduct research in the field of pesticides.
- 14 15. "Land" means all land and water areas, including airspace, and all plants, animals,
15 structures, buildings, contrivances, and machinery, appurtenant to or situated on land,
16 fixed or mobile, including any used for transportation.
- 17 16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class
18 nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies
19 covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be
20 called nemas or eelworms.
- 21 17. "Pest" means any insect, rodent, nematode, fungus, or weed; or any other form of
22 terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism,
23 except viruses, bacteria, or other micro-organisms on or in living humans or other
24 living animals.
- 25 18. "Pesticide" means:
26 a. Any substance or mixture of substances intended for preventing, destroying,
27 repelling, or mitigating any pest; and
28 b. Any substance or mixture of substances intended for use as a plant regulator,
29 defoliant, or desiccant.
- 30 19. "Pesticide dealer" means any person, other than a pesticide wholesaler, distributing
31 pesticides.

- 1 20. "Plant regulator" means any substance or mixture of substances intended, through
2 physiological action, to accelerate or retard the rate of growth or rate of maturation, or
3 to otherwise alter the behavior of plants or the produce thereof, but does not include
4 substances to the extent that they are intended as plant nutrients, trace elements,
5 nutritional chemicals, plant inoculants, or soil amendments.
- 6 21. "Private applicator" means an individual who is required to be a certified applicator to
7 buy or use a restricted use pesticide on property owned or rented by the applicator or
8 the applicator's employer or, if applied without compensation other than trading of
9 personal services between producers of agricultural commodities, on the property of
10 another person.
- 11 22. "Public applicator" means an applicator who applies pesticides, other than
12 ready-to-use pesticides, as an employee of:
- 13 a. A governmental agency, municipal corporation, or public utility; or
14 b. A hospital, privately owned golf course, nursery, or greenhouse.
- 15 23. "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which
16 is applied directly from its original container consistent with label directions, and
17 includes aerosol spray cans, ready-to-use spray containers, bait packs, and other
18 types of containers that do not require mixing or loading before application.
- 19 24. "Restricted use pesticide" means any pesticide formulation that is classified as
20 restricted use by the United States environmental protection agency or the agriculture
21 commissioner under section 4.1-34-06.
- 22 25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure
23 rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- 24 26. "Tank mix" means any pesticidal formulation used alone or in combination with another
25 pesticide and mixed with a liquid carrier prior to application.
- 26 27. "Unreasonable adverse effects on the environment" means any unreasonable risk to
27 humans or the environment, taking into account the economic, social, and
28 environmental costs and benefits of the use of any pesticide.
- 29 28. "Weed" means any plant that grows where not wanted.
- 30 29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined
31 in this chapter, pests, including mammals, birds, and aquatic life.

1 **4.1-33-02. Pesticide control board - Enforcement by agriculture commissioner.**

- 2 1. The pesticide control board consists of the agriculture commissioner, the director of
3 the cooperative extension division of the North Dakota state university of agriculture
4 and applied science, and the director of the agricultural experiment station at North
5 Dakota state university of agriculture and applied science. The agriculture
6 commissioner is chairman of the board. The board shall meet at the call of the
7 chairman.
- 8 2. The agriculture commissioner is responsible for the enforcement of this chapter. Any
9 authority of the commissioner under this chapter may be executed by such employees
10 or agents designated by the commissioner.
- 11 3. The members of the board must be compensated for their expenses in performing
12 their duties under this chapter at the same rate as other state officials and the board's
13 expenses must be paid from funds provided to the agriculture commissioner for the
14 administration of this chapter. The board may act through the office of the agriculture
15 commissioner and the commissioner's staff shall provide staff services for the board
16 as directed by the commissioner.

17 **4.1-33-03. Pesticide control board to administer chapter and adopt rules.**

- 18 1. a. The pesticide control board shall administer this chapter and may adopt rules
19 under chapter 28-32 to implement this chapter. The rules may prescribe methods
20 to be used in the application of pesticides. The rules may relate to the time,
21 place, manner, methods, materials, and amounts and concentrations, in
22 connection with the application of the pesticide, and may restrict or prohibit use of
23 pesticides in designated areas during specified periods of time and shall
24 encompass all reasonable factors which the board deems necessary to prevent
25 damage or injury by drift or misapplication to:
- 26 (1) Plants, including forage plants, on adjacent or nearby lands.
- 27 (2) Wildlife in the adjoining or nearby areas.
- 28 (3) Fish and other aquatic life in waters in proximity to the area to be treated.
- 29 (4) Persons, animals, or beneficial insects.

1 b. In adopting rules, the board shall give consideration to pertinent research findings
2 and recommendations of other agencies of this state, the federal government, or
3 other reliable sources.

4 2. In adopting rules under this chapter, the board shall prescribe standards and
5 requirements for the certification of applicators of pesticides. These standards and
6 requirements must relate to the use and handling of pesticides. In determining these
7 standards and requirements, the board shall take into consideration standards and
8 requirements prescribed by the United States environmental protection agency.

9 3. Rules adopted under this chapter may not permit any pesticide use that is prohibited
10 by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or
11 regulations or orders issued thereunder.

12 4. To comply with the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136
13 et seq.], the board may make reports to the United States environmental protection
14 agency in the form and containing the information as that agency requires.

15 5. Rules to implement this chapter may provide for:

16 a. The collection, examination, and reporting of samples of pesticides.

17 b. The safe handling, transportation, storage, display, distribution, and disposal of
18 pesticides and pesticides containers.

19 c. The identification of pests under this chapter when the board finds particular
20 organisms to be annoying or otherwise injurious or harmful to agriculture, health,
21 and the environment.

22 **4.1-33-04. Limitation on authority of political subdivisions regarding pesticides.**

23 A political subdivision, including a home rule city or county, may not adopt or continue in
24 effect any ordinance, resolution, or home rule charter provision regarding the registration,
25 labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides.

26 This section does not apply to city zoning ordinances.

27 **4.1-33-05. Application to governmental entities and public utilities.**

28 All governmental agencies and public utilities are subject to this chapter and rules adopted
29 under this chapter.

1 **4.1-33-06. Classification of commercial certificates.**

2 The board may classify commercial certificates to be issued under this chapter. The
3 classifications may include pest control operators, wood treaters, ornamental or agricultural
4 pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be
5 specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or
6 to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each
7 classification of certification may be subject to separate testing procedures and training
8 requirements. A person may be required to pay an additional fee if the person desires to be
9 certified in one or more of the classifications provided for by the board under this section.

10 **4.1-33-07. Commercial and public applicator's certification.**

- 11 1. A commercial or public applicator may not purchase, use, or supervise the use of a
12 pesticide without first complying with the certification standards and requirements of
13 this chapter, or other restrictions as may be determined by the board.
- 14 2. An individual may be certified as a commercial or public applicator within a
15 classification if the individual successfully completes an examination for the
16 classification as prescribed by the board and administered by the North Dakota state
17 university extension service or the service's designee. An application for certification
18 must be on a form prescribed by the board and accompanied by a reasonable
19 examination fee set by the board.
- 20 3. If the North Dakota state university extension service, or its designee, finds, after
21 examination as the board requires, the applicant qualified to apply pesticides in the
22 classifications for which the applicant has applied and the applicant meets all other
23 requirements of this chapter, the North Dakota state university extension service shall
24 issue a commercial or a public applicator's certificate limited to the classifications in
25 which the applicant is qualified.
- 26 4. If certification is not to be issued as applied for, the North Dakota state university
27 extension service, or its designee, shall inform the applicant in writing of the reasons
28 for not issuing the certification.

29 **4.1-33-08. Expiration of certification - Renewal.**

30 A certificate issued under section 4.1-33-07 expires as of the first day of April following two
31 years from the date of issuance. A certificate is renewable every three years on April first. A

1 certificate may be renewed upon completion of a seminar approved by the board or upon
2 successfully completing an examination required by the board, or both, if required by the board.
3 The board shall require a person holding a current valid certificate to take an examination within
4 the three-year period if the board determines additional knowledge related to classifications for
5 which the applicant has applied makes a new examination necessary or that a new evaluation
6 is necessary to assure a continuing level of competence and ability to safely and properly use
7 pesticides.

8 **4.1-33-09. Nonresident application - Designation of agent for service of process.**

- 9 1. A nonresident applying for certification as an applicator or dealer under this chapter
10 shall file a written power of attorney in a form as to render effective the jurisdiction of
11 the courts of this state over the nonresident applicant designating either:
12 a. North Dakota state university extension service or its designee as the
13 nonresident's agent upon whom service of process may be had in the event of
14 any suit against that nonresident person; or
15 b. The duly appointed nonresident person's resident agent upon whom process may
16 be served as provided by law.
17 2. The extension service is allowed such fees for service as a registered agent as
18 provided by law for designating resident agents. The nonresident must be furnished
19 with a copy of the designation of the extension service or of a resident agent. The
20 copy must be duly certified by the extension service.

21 **4.1-33-10. Proof of financial responsibility - Exceptions.**

- 22 1. A commercial applicator certificate may not be issued unless the applicant furnishes
23 proof of financial responsibility. Financial responsibility must be maintained in the
24 amount of one hundred thousand dollars. Financial responsibility may be
25 demonstrated by a notarized letter from an officer of a financial institution or from a
26 certified public accountant attesting to the existence of net assets equal to at least one
27 hundred thousand dollars, a performance bond, or a general liability insurance policy.
28 The performance bond or insurance policy must contain a provision requiring the
29 issuing company to notify the agriculture commissioner at least ten days before the
30 effective date of cancellation, termination, or other modification of the bond or
31 insurance policy. When requested by the agriculture commissioner, a commercial

1 applicator immediately shall furnish proof of compliance with this section. If the
2 applicator is unable to furnish the required proof, the commissioner may stop a
3 pesticide application and not allow resumption until the applicator furnishes proof of
4 compliance. The agriculture commissioner shall immediately suspend the certification
5 of a commercial applicator who fails to maintain the financial responsibility standards
6 of this section. If there is any recovery against the commercial applicator, the
7 applicator shall demonstrate continued compliance with the requirements of this
8 section. An application for reinstatement of a certificate suspended under this section
9 must be accompanied by proof that any judgment previously rendered against the
10 applicant has been satisfied.

11 2. This section does not apply to:

- 12 a. A rancher who must obtain a commercial applicator certificate for controlling
13 noxious weeds on the leased federal acreage as a condition of a federal
14 grasslands lease.
- 15 b. A grazing association and its members if either the association or any member
16 must obtain a commercial applicator certificate for controlling noxious weeds on
17 the leased federal acreage as a condition of a federal grasslands lease.
- 18 c. A person who must be certified in the right-of-way category.
- 19 d. A commercial applicator who controls noxious weeds on grassland, land
20 producing tame hay, or other lands not devoted to the production of an annual
21 crop.
- 22 e. An employee of a commercial applicator if the commercial applicator complies
23 with this section.

24 **4.1-33-11. Pesticide dealer certification - Employees - Requirements for purchase.**

- 25 1. A pesticide dealer may not distribute restricted use pesticides or act as a restricted use
26 pesticide dealer, without first having obtained certification from the North Dakota state
27 university extension service, or the service's designee. During hours the business is
28 open, a certified person must be at any location or outlet from which restricted use
29 pesticides are distributed. Any manufacturer or distributor that has no pesticide dealer
30 outlet within this state and which distributes such pesticides directly into this state shall
31 obtain a pesticide dealer certificate for its principal out-of-state location or outlet.

- 1 2. Application for a certificate must be on a form prescribed by the board accompanied
2 by an examination fee set by the board. The application must include the address of
3 each outlet, the principal business address of the applicant, the name of a person
4 domiciled in this state authorized to receive and accept service of summons of legal
5 notices of all kinds for the applicant, and any other necessary information prescribed
6 by the board.
- 7 3. The board shall require each pesticide dealer to demonstrate to the North Dakota
8 state university extension service or the service's designee knowledge of pesticide
9 laws and regulations; pesticide hazards to humans, animals, and the environment; and
10 the safe distribution, disposal, and use and application of pesticides by satisfactorily
11 passing an examination or meeting other requirements as prescribed by the board
12 within each classification for which certification is sought.
- 13 4. Each pesticide dealer is responsible for the acts of each individual employed by the
14 dealer in the solicitation and sale of restricted use pesticides and all claims and
15 recommendations for use of such pesticides. The dealer's certification is subject to
16 suspension or revocation, after a hearing, for any violation of this chapter committed
17 by the dealer or by the dealer's officer, agent, or employee.
- 18 5. A certificate issued under this section expires on the first day of April following two
19 years from the date of issuance. A certificate is renewable every three years on April
20 first. The board may condition renewal of a certificate upon completion of a seminar
21 approved by the board or successful completion of an examination required by the
22 board, or both. The board may require any person holding a current valid certificate to
23 take an examination within the three-year period if the board determines additional
24 knowledge related to pesticides makes an additional examination necessary or that a
25 new evaluation is necessary to assure a continuing level of competence and ability to
26 safely and properly distribute pesticides.
- 27 6. Restricted use pesticides may be sold only to:
- 28 a. Persons certified as applicators by this state; and
- 29 b. Persons certified to use restricted use pesticides by another state, provided the
30 pesticide control board determines the certifying state's requirements are

1 substantially similar to those of this state and that the person does not use the
2 restricted use pesticide in this state.

3 **4.1-33-12. Private applicators - Certification.**

4 1. a. An individual who would be a private applicator, if certified, may not buy any
5 restricted use pesticide unless the individual first complies with the certification
6 requirements established by the board.

7 b. An individual who would be a private applicator, if certified, may not use any
8 restricted use pesticide unless the individual:

9 (1) Complies with the certification requirements established by the board; or

10 (2) Is under the direct supervision of a certified applicator.

11 2. Certification standards to determine the individual's competency with respect to the
12 use and handling of the pesticide or class of pesticides the private applicator is to be
13 certified to use must be determined by the board. In determining these standards, the
14 board shall consider similar standards of the United States environmental protection
15 agency. The North Dakota state university extension service, or its designee, shall
16 issue a certificate to any private applicator who has qualified as prescribed by the
17 board. The North Dakota state university extension service, or its designee, may
18 require any applicant required to be certified under this section to pay a reasonable
19 fee, not greater than the cost to the North Dakota state university extension service,
20 for materials provided to the applicant for training and education.

21 **4.1-33-13. Unlawful acts - Grounds for denial, suspension, or revocation of a**
22 **certification.**

23 It is a violation of this chapter for any person to:

24 1. Make false or fraudulent claims through any media, misrepresenting the effect of
25 materials or methods to be utilized, or advertise a pesticide without reference to its
26 classification.

27 2. Make a pesticide recommendation, application, or use inconsistent with the labeling or
28 other restrictions prescribed by the board.

29 3. Apply materials known by that person to be ineffective or improper.

30 4. Operate faulty or unsafe equipment.

31 5. Operate in a faulty, careless, or negligent manner.

- 1 6. Neglect or, after notice, refuse to comply with this chapter, the rules adopted to
- 2 implement this chapter, or any lawful order of the commissioner.
- 3 7. Refuse or neglect to keep and maintain the records required by this chapter or to
- 4 make reports when and as required.
- 5 8. Make false or fraudulent records, invoices, or reports.
- 6 9. Apply pesticide to the property of another, without the permission of the owner or
- 7 lessee, unless the application is made under the direction of a governmental entity.
- 8 10. Use fraud or misrepresentation in making an application for, or for renewal of,
- 9 certification.
- 10 11. Refuse or neglect to comply with any limitations or restrictions on or in a duly issued
- 11 certification.
- 12 12. Aid or abet a person to evade this chapter, conspire with a person to evade this
- 13 chapter, or allow the person's certification to be used by another person.
- 14 13. Knowingly make false statements during or after an inspection or an investigation.
- 15 14. Impersonate a federal, state, county, or city inspector or official.
- 16 15. Distribute any restricted use pesticide to any person who is not properly certified to
- 17 use or purchase the pesticide.
- 18 16. Buy, use, or supervise the use of any pesticide without first complying with the
- 19 certification requirements of this chapter, unless otherwise exempted.
- 20 17. Apply any pesticide that is not registered under chapter 4.1-34.

21 **4.1-33-14. Records - Retention - Submission to commissioner.**

22 The board shall require pesticide dealers, commercial applicators, and public applicators to
23 maintain records of sales and purchases of restricted use and special exemption pesticides.
24 The board shall require commercial applicators and public applicators to maintain records of all
25 applications of pesticides. The board may require restricted use pesticide application records of
26 private applicators. The records must be kept for a period of three years from the date of the
27 application, sale, or purchase of the pesticide. Upon request, all or any requested part of these
28 records must be submitted to the commissioner.

29 **4.1-33-15. Reciprocal agreement.**

30 The North Dakota state university extension service, or its designee, may issue a
31 certification on a reciprocal basis, without examination, to a nonresident who is certified to buy.

1 distribute, or use restricted use pesticides under a plan substantially similar to this chapter and
2 after the applicant has paid a fee, set by the board, not greater than the fee or charge
3 authorized under section 4.1-33-07, 4.1-33-11, or 4.1-33-12 if the applicant would have taken
4 the appropriate examination. Such a certification may be suspended or revoked in the same
5 manner and on the same grounds as certifications under this chapter, and must be suspended
6 or revoked if the nonresident's home state certification is suspended or revoked.

7 **4.1-33-16. Certification exemptions.**

8 1. The certification requirements of this chapter do not apply to an individual applying
9 nonrestricted use pesticides under the direct supervision of a commercial applicator,
10 unless the pesticide label requires that a certified applicator personally apply the
11 pesticide. A pesticide is applied under the direct supervision of a commercial applicator
12 if the pesticide is applied by an individual acting under the instruction and control of a
13 certified applicator who is physically available if needed. The certified applicator need
14 not be present when the pesticide is applied. Direct supervision with respect to
15 applications using aircraft requires that the pilot of the aircraft be appropriately
16 certified. The certification requirements of this chapter do not apply to a competent
17 person applying restricted use pesticides under the direct supervision of a private
18 applicator, unless the pesticide label requires that a certified applicator personally
19 apply the particular pesticide. A pesticide is deemed to be applied under the direct
20 supervision of a private applicator if it is applied by a competent person acting under
21 the instruction and control of a private applicator who is available if and when needed,
22 even though the private applicator is not physically present at the time and place that
23 the pesticide is applied.

24 2. The certification requirements of this chapter do not apply to any person conducting
25 laboratory-type research using restricted use pesticides or to a doctor of medicine or a
26 doctor of veterinary medicine applying a pesticide as a drug or as medication during
27 the course of normal practice.

28 **4.1-33-17. Discarding and storing of pesticides, pesticide containers, and rinsate.**

29 A person may not discard, store, display, or permit the disposal of surplus pesticides, empty
30 pesticide containers and devices, or rinsate in such a manner as to endanger the environment
31 or to endanger food, feed, or any other products that may be stored, displayed, or distributed

1 with such pesticides. The board shall adopt rules governing the discarding, storage, display, or
2 disposal of any pesticide, rinsate, pesticide containers, or devices.

3 **4.1-33-18. Pesticide application - Alleged property damage - Notification of applicator.**

4 1. a. Before a person may file a civil action seeking reimbursement for property
5 damage allegedly stemming from the application of a pesticide, the person shall
6 notify by certified mail the pesticide applicator of the alleged damage within the
7 earlier of:

8 (1) Twenty-eight days from the date the person first knew or should have known
9 of the alleged damage; or

10 (2) Before twenty percent of the crop or field allegedly damaged is harvested or
11 destroyed.

12 b. Subdivision a does not apply if the person seeking reimbursement for property
13 damage was the applicator of the pesticide.

14 2. Upon notifying the applicator as required under subsection 1, the person seeking
15 reimbursement for the alleged property damage shall permit the applicator and up to
16 four representatives of the applicator to enter the person's property for the purpose of
17 observing and examining the alleged damage. If the person fails to allow entry, the
18 person is barred from asserting a claim against the applicator.

19 **4.1-33-19. Subpoenas.**

20 In any hearing to enforce this chapter, the commissioner may issue subpoenas to compel
21 the attendance of witnesses or production of books, documents, and records pertaining to
22 pesticide applications, sales, and purchases in the state.

23 **4.1-33-20. Penalties.**

24 1. Any person other than a private applicator who knowingly violates this chapter is guilty
25 of a class A misdemeanor.

26 2. Any private applicator who knowingly violates this chapter is guilty of a class B
27 misdemeanor.

28 3. When construing and enforcing the provisions of this chapter, the act, omission, or
29 failure of any officer, agent, or other person acting for or employed by any person must
30 in every case be also deemed to be the act, omission, or failure of such person as well
31 as that of the person employed.

1 4. A person who violates this chapter or the rules adopted under this chapter is subject to
2 a civil penalty not to exceed five thousand dollars for each violation. The civil penalty
3 may be imposed by a court in a civil proceeding or by the agriculture commissioner
4 through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a
5 civil penalty does not preclude the imposition of other sanctions authorized by law, this
6 chapter, or rules adopted under this chapter.

7 5. After providing an opportunity for a hearing, the commissioner may deny, suspend,
8 revoke, or modify the provision of any certification issued under this chapter, if the
9 commissioner determines that the applicant for certification or the holder of a
10 certificate has violated this chapter or any rules adopted under this chapter.

11 **4.1-33-21. Enforcement.**

12 1. The commissioner shall enforce the requirements of this chapter and any rules
13 adopted under this chapter.

14 2. The commissioner may bring an action to enjoin the violation or threatened violation of
15 this chapter, or any rule adopted under this chapter, in the district court of the county in
16 which the violation occurs or is about to occur.

17 3. If any person violates this chapter, the commissioner may issue an order requiring the
18 person to cease and desist from the unlawful activity. If the violator fails to obey, the
19 commissioner shall cause the appropriate criminal complaint to be filed.

20 4. The commissioner may enter upon any public or private premises at reasonable times,
21 to:

22 a. Inspect any equipment subject to this chapter and the premises on which the
23 equipment is stored or used.

24 b. Inspect or sample lands actually or reported to be exposed to pesticides.

25 c. Inspect storage or disposal areas.

26 d. Inspect or investigate complaints of injury to humans or land.

27 e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes
28 without compensation to the owner for values less than three dollars.

29 f. Observe the use and application of a pesticide.

30 g. Inspect any place where pesticides or devices are stored or held for distribution,
31 sale, or use, and obtain samples of any pesticides packaged, labeled, and

1 released for shipment and samples of any containers or labeling for the
2 pesticides.

3 5. a. At any reasonable time, the commissioner may access records pertaining to the
4 pesticide application, sales, purchases, and repackaging by any person. The
5 commissioner may copy or make copies of the records for the purpose of this
6 chapter. These records are confidential. However, the commissioner may use
7 these records in any way to enforce this chapter. Any record the commissioner
8 uses as an exhibit in an enforcement action is no longer a confidential record.

9 b. If an individual alleges exposure to pesticides and if the individual's medical
10 provider requests that the commissioner reveal the name of the pesticide, the
11 commissioner may reveal the name of the pesticide to the individual making the
12 request, together with the registration number assigned by the United States
13 environmental protection agency. The commissioner may require a request under
14 this section be made in writing.

15 6. If access is refused or if the commissioner determines critical enforcement
16 documentation may be lost, the commissioner may apply to any court for a search
17 warrant authorizing access to land or records. Upon compliance with chapter 29-29.1,
18 the court may issue the search warrant for the purposes requested.

19 7. The commissioner may suspend or revoke a certification issued under this chapter for
20 failure to pay a civil penalty within thirty days after a final determination is made that
21 the civil penalty is owed.

22 **4.1-33-22. Stop-sale orders.**

23 If the commissioner has reason to believe on the basis of inspection or tests that any
24 pesticide or device is in violation of any provision of this chapter, or if the registration of the
25 pesticide has been canceled or suspended by the state or United States environmental
26 protection agency, the commissioner may issue a written or printed "stop-sale, use, or removal"
27 order to any person who owns, controls, or has custody of the pesticide or device. After receipt
28 of the order, a person may not sell, use, or remove the pesticide or device described in the
29 order except in accordance with the provisions of the order.

1 **4.1-33-23. Information and instruction.**

2 In cooperation with private, local, state, or federal agencies, the board may publish
3 information and conduct short courses of instruction in the areas of knowledge required by this
4 chapter.

5 **4.1-33-24. Cooperation by the board with other entities.**

6 The board may cooperate, receive grants-in-aid, and enter cooperative agreements with
7 any agency of the federal government, of this state or its subdivisions, or with any agency of
8 another state, to:

9 1. Secure uniformity of regulations.

10 2. Enter cooperative agreements with and submit plans to the United States
11 environmental protection agency for approval to issue experimental use permits under
12 the authority of this chapter and the Federal Insecticide, Fungicide, and Rodenticide
13 Act [7 U.S.C. 136 et seq.].

14 3. Cooperate in the enforcement of the federal pesticide control laws and state laws
15 through the use of state or federal personnel and facilities and to implement
16 cooperative enforcement programs.

17 4. Enter contracts with other agencies, including federal agencies, for the purpose of
18 training pesticide applicators, managers, dealers, and pesticide consultants.

19 5. Gain assistance in implementation of this chapter.

20 6. Regulate certified applicators.

21 7. Comply with other purposes prescribed by rules of the commissioner.

22 **4.1-33-25. Disposition of funds - Certification and training fund.**

23 All moneys received by the pesticide control board under this chapter must be deposited to
24 the credit of the certification and training fund under the control of the board.

25 **SECTION 3.** Chapter 4.1-34 of the North Dakota Century Code is created and enacted as
26 follows:

27 **4.1-34-01. Definitions.**

28 For the purposes of this chapter, unless the context or subject matter otherwise requires:

29 1. "Active ingredient" means:

30 a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any
31 ingredient that will prevent, destroy, repel, or mitigate pests.

- 1 b. In the case of a plant regulator, any ingredient that, through physiological action,
2 will accelerate or retard the rate of growth or rate of maturation or otherwise alter
3 the behavior of ornamental or crop plants or the product thereof.
- 4 c. In the case of a defoliant, any ingredient that will cause the leaves or foliage to
5 drop from a plant.
- 6 d. In the case of a desiccant, any ingredient that will artificially accelerate the drying
7 of plant tissue.
- 8 2. "Adulterated" applies to any pesticide if its strength or purity falls below the professed
9 standard or quality as expressed on labeling or under which it is sold, or if any
10 substance has been substituted wholly or in part for the pesticide, or if any valuable
11 constituent of the pesticide has been wholly or in part abstracted.
- 12 3. "Antidote" means the most practical immediate treatment in case of poisoning and
13 includes first-aid treatment.
- 14 4. "Commissioner" means the agriculture commissioner and includes any employee or
15 agent designated by the commissioner.
- 16 5. "Defoliant" means any substance or mixture of substances intended to cause the
17 leaves or foliage to drop from a plant with or without causing abscission.
- 18 6. "Desiccant" means any substance or mixture of substances intended to artificially
19 accelerate the drying of plant tissues.
- 20 7. "Device" means any instrument or contrivance intended for trapping, destroying,
21 repelling, or mitigating pests but does not include equipment used for the application
22 of pesticides when sold separately therefrom, or rodent traps.
- 23 8. "Environment" means air, water, land, and all plants and man and other animals living
24 therein and the interrelationships that exist among these.
- 25 9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.
26 136 et seq.].
- 27 10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all
28 non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for
29 example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in
30 living man or other animals, and those on or in processed food, beverages, or
31 pharmaceuticals.

- 1 11. "Fungicide" means any substance or mixture of substances intended for preventing,
2 destroying, repelling, or mitigating any fungi.
- 3 12. "Herbicide" means any substance or mixture of substances intended for preventing,
4 destroying, repelling, or mitigating any weed.
- 5 13. "Inert ingredient" means an ingredient that is not an active ingredient.
- 6 14. "Ingredient statement" means:
- 7 a. A statement of the name and percentage of each active ingredient, together with
8 the total percentage of the inert ingredients, in the pesticide; or
- 9 b. A statement of the name of all active ingredients in the order of their
10 predominance in the product, together with the name of each and total
11 percentage of any inert ingredients in the pesticide, except subdivision a applies
12 if the preparation is highly toxic to humans, determined as provided in section
13 4.1-34-06, and in addition to subsections 1 and 2 of section 4.1-34-06. If the
14 pesticide contains arsenic in any form, a statement must contain the percentages
15 of total and water-soluble arsenic, each calculated as elemental arsenic.
- 16 15. "Insect" means any of the numerous small invertebrate animals generally having the
17 body more or less obviously segmented, for the most part belonging to the class
18 insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs,
19 bees, flies, and to other allied classes of arthropods whose members are wingless and
20 usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and
21 wood lice.
- 22 16. "Insecticide" means any substance or mixture of substances intended for preventing,
23 destroying, repelling, or mitigating any insects that may be present in any
24 environment.
- 25 17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide
26 or device, or any of its containers or wrappers.
- 27 18. "Labeling" means all labels and other written, printed, or graphic matter:
- 28 a. Upon the pesticide or device or any of its containers or wrappers;
- 29 b. Accompanying the pesticide or device at any time; or
- 30 c. To which reference is made on the label or in literature accompanying the
31 pesticide or device, except when accurate, nonmisleading reference is made to

1 current official publications of a state or federal agency, state agricultural
2 experiment station, or state agricultural college.

3 19. "Misbranded" applies:

4 a. To any pesticide or device if its labeling bears any statement, design, or graphic
5 representation relative to the pesticide or device or to its ingredients which is
6 false or misleading in any particular; and

7 b. To any pesticide:

8 (1) If the pesticide is an imitation of or is offered for sale under the name of
9 another pesticide;

10 (2) If the pesticide's labeling bears any reference to registration under this
11 chapter;

12 (3) If the labeling accompanying the pesticide does not contain directions for
13 use which are necessary and, if complied with, adequate to protect health
14 and the environment;

15 (4) If the label does not contain a warning or caution statement that may be
16 necessary and, if complied with, adequate to protect health and the
17 environment;

18 (5) If the label does not bear an ingredient statement on that part of the
19 immediate container and, if there is an outside container or wrapper, if the
20 outside container or wrapper does not have affixed a correct copy of the
21 required labeling information from the immediate container or does not
22 contain an opening through which the ingredient statement on the
23 immediate container can be clearly read, of the retail package that is
24 presented or displayed under customary conditions of purchase; except that
25 a pesticide is not misbranded under this subsection if:

26 (a) The size or form of the immediate container, or the outside container
27 or wrapper of the retail package, makes it impracticable to place the
28 ingredient statement on the part that is presented or displayed under
29 customary conditions of purchase; and

- 1 (b) The ingredient statement appears prominently on another part of the
2 immediate container, or outside container or wrapper, permitted by the
3 commissioner;
- 4 (6) The labeling does not contain a statement of the use classification under
5 which the product is registered if the product is a restricted use pesticide;
- 6 (7) There is no label information affixed to its container, and, if there is an
7 outside container or wrapper of the retail package, there is no label
8 information affixed to the outside container or wrapper and the outside
9 container or wrapper does not contain an opening through which the label
10 information on the immediate container can be clearly read. The label
11 information must include:
- 12 (a) The name and address of the producer, registrant, or person for
13 whom produced;
- 14 (b) The name, brand, or trademark under which the pesticide is sold; and
15 (c) The net weight or measure of the content;
- 16 (8) The pesticide contains any substance or substances in quantities highly
17 toxic to humans, unless the label bears, in addition to any other matter
18 required by this chapter:
- 19 (a) The skull and crossbones;
20 (b) The word "poison" prominently in red on a background of distinctly
21 contrasting color; and
- 22 (c) A statement of a first aid or other practical treatment in case of
23 poisoning by the pesticide;
- 24 (9) If any word, statement, or other information required under this chapter to
25 appear on the labeling is not prominently placed thereon with such
26 conspicuousness, as compared with other words, statements, designs, or
27 graphic matter in the labeling, and in such terms as to render it likely to be
28 read and understood by the ordinary individual under customary conditions
29 of purchase and use;
- 30 (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when
31 used as directed or in accordance with commonly recognized practice, it is

- 1 injurious to humans or vertebrate animals or vegetation, except weeds to
2 which it is applied, or to the individual applying the pesticide; or
3 (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious
4 to humans or vertebrate animals, or the vegetation to which it is applied.
5 The physical or physiological effect on plants may not be deemed injurious
6 when this is the purpose for which the plant regulator, defoliant, or desiccant
7 is applied in accordance with label claims and recommendations.
- 8 20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate
9 nematodes.
- 10 21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural
11 plants.
- 12 22. "Person" means any individual, partnership, association, corporation, limited liability
13 company, or organized group of persons whether incorporated or not.
- 14 23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of
15 terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms
16 except viruses, bacteria, or other micro-organisms on or in living humans or animals.
- 17 24. "Pesticide" means any substance or mixture of substances intended for preventing,
18 destroying, repelling, or mitigating any pests and any substance or mixture of
19 substances intended for use as a plant regulator, defoliant, or desiccant.
- 20 25. "Plant regulator" means any substance or mixture of substances intended, through
21 physiological action, to accelerate or retard the rate of growth or maturation, or to
22 otherwise alter the behavior of ornamental or crop plants or the produce thereof, but
23 does not include substances insofar as they are intended to be used as plant
24 nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
25 The term "plant regulator" does not include any of such of those nutrient mixtures or
26 soil amendments as are commonly known as vitamin-hormone horticultural products,
27 intended for improvement, maintenance, survival, health, and propagation of plants,
28 and as are not for pest destruction and are nontoxic and nonpoisonous in the
29 undiluted packaged concentration.
- 30 26. "Protect health and environment" means protection against any unreasonable adverse
31 effects on the environment.

- 1 27. "Registrant" means the person registering any pesticide pursuant to this chapter.
- 2 28. "Restricted use pesticides" means any pesticide formulation that is classified for
3 restricted use by the United States environmental protection agency. The term also
4 includes a pesticide formulation classified for restricted use by the commissioner
5 under section 4.1-34-06.
- 6 29. "Rodenticide" means any substance or mixture of substances intended for preventing,
7 destroying, repelling, or mitigating rodents or any other vertebrate animal that the
8 commissioner declares to be a pest.
- 9 30. "Snails" or "slugs" includes all harmful agricultural mollusks.
- 10 31. "Unreasonable adverse effects on the environment" means any unreasonable risk to
11 humans or the environment, taking into account the economic, social, and
12 environmental costs and benefits of the use of any pesticide.
- 13 32. "Weed" means any plant that grows where not wanted.

14 **4.1-34-02. Prohibited acts.**

- 15 1. A person may not distribute, sell, or offer for sale within this state or deliver for
16 transportation or transport in intrastate commerce or between points within this state
17 through any point outside this state any of the following:
- 18 a. Any pesticide that has not been registered under section 4.1-34-03, or any
19 pesticide if any of the claims made for it or any of the directions for its use differ in
20 substance from the representations made in connection with its registration, or if
21 the composition of a pesticide differs from its composition as represented in
22 connection with its registration. The commissioner may allow a change in the
23 labeling or formula of a pesticide to be made within a registration period without
24 requiring reregistration of the product.
- 25 b. Any pesticide unless the pesticide is in:
- 26 (1) The registrant's or the manufacturer's unbroken immediate container; or
27 (2) A container repackaged by a facility or person with a United States
28 environmental protection agency issued establishment number, and there is
29 affixed to such container, and to any outside container or wrapper of the
30 retail package, a correct copy of the required labeling information from the
31 immediate container or there is in the outside container or wrapper an

1 opening through which the required labeling information on the immediate
2 container can be clearly read.

3 c. The pesticide commonly known as standard lead arsenate, basic lead arsenate,
4 calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium
5 fluoride, sodium fluosilicate, and barium fluosilicate unless the pesticide has been
6 distinctly colored or discolored as provided by rules issued in accordance with
7 this chapter, or any other white powder pesticide that the commissioner, after
8 investigation of and after public hearing on the necessity for the action for the
9 protection of the public health and the feasibility of the coloration or discoloration,
10 by rule, requires to be distinctly colored or discolored; unless it has been so
11 colored or discolored. The commissioner may exempt any pesticide to the extent
12 it is intended for a particular use or uses from the coloring or discoloring required
13 or authorized by this section if the commissioner determines the coloring or
14 discoloring for the use is not necessary for the protection of the public health.

15 d. Any pesticide that is adulterated or misbranded, or any device that is
16 misbranded.

17 2. A person may not detach, alter, deface, or destroy, in whole or in part, any label or
18 labeling provided for in this chapter or rules adopted under this chapter, or to add any
19 substance to, or take any substance from, a pesticide in a manner that may defeat the
20 purpose of this chapter.

21 3. A person may not use for the person's own advantage or reveal other than in response
22 to a proper subpoena, except to a physician or other qualified person for use in the
23 preparation of an antidote, any information relative to the formula of any product
24 acquired by authority of this chapter.

25 **4.1-34-03. Registration - Fees - Deposit of collections.**

26 1. Before selling or offering for sale any pesticide for use within this state, a person shall
27 file biennially with the commissioner an application for registration of the pesticide. The
28 application must:

29 a. Give the name and address of each manufacturer or distributor.

30 b. Give the name and brand of each product to be registered.

31 c. Be accompanied by a current label of each product to be registered.

- 1 d. Be accompanied by a registration fee of three hundred fifty dollars for each
2 product to be registered.
- 3 e. Be accompanied by a material safety data sheet for each product to be
4 registered.
- 5 2. The commissioner may require an applicant or registrant to provide efficacy, toxicity,
6 residue, and any other data necessary to determine if the pesticide will perform its
7 intended function without unreasonable adverse effects on the environment. If the
8 commissioner finds the application conforms to law, the commissioner shall issue to
9 the applicant a certificate of registration of the product.
- 10 3. Each registration covers a designated two-year period beginning January first of each
11 even-numbered year and expiring December thirty-first of the following year. A
12 certificate of registration may not be issued for a term longer than two years, and is not
13 transferable from one person to another, or from the ownership to which it is issued to
14 another ownership. A penalty of fifty percent of the license or registration fee must be
15 imposed if the license or certificate of registration is not applied for on or before
16 January thirty-first following the expiration date. Each product must go through a
17 two-year discontinuance period in order to clear all outstanding products in the
18 channel of trade.
- 19 4. This section does not apply to a pesticide sold by a retail dealer if the registration fee
20 has been paid by the manufacturer, jobber, or any other person, as required by this
21 section.
- 22 5. At the close of each calendar month, the commissioner shall transmit to the state
23 treasurer all moneys received for the registrations under this section. The state
24 treasurer shall credit the registration fees to the environment and rangeland protection
25 fund.

26 **4.1-34-04. Reporting requirements.**

27 Within thirty days after request by the commissioner, a registrant shall report the amount
28 and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state.
29 The information required must include the brand name, amount, and formulation of each
30 pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand
31 names may not be identified in any report or otherwise made public.

1 **4.1-34-05. Protection of trade secrets.**

- 2 1. In submitting data required by this chapter, the applicant may:
3 a. Clearly mark any portions that the applicant requests the commissioner to
4 determine to be trade secrets or commercial or financial information; and
5 b. Submit the marked material separately from other material.
6 2. After consideration of the applicant's request submitted under subsection 1, the
7 commissioner may not make any information public which in the commissioner's
8 judgment contains or relates to trade secrets or to commercial or financial information
9 obtained from an applicant. When necessary, information relating to formulas of
10 products may be revealed to any state or federal agency consulted with similar
11 protection of trade secret authority and may be revealed at a public hearing or in
12 findings of facts issued by the commissioner.
13 3. If the commissioner proposes to release information that the applicant or registrant
14 believes to be protected from disclosure under this section, the commissioner shall
15 notify the applicant or registrant by certified mail. The commissioner may not make the
16 information available for inspection until thirty days after receipt of the notice by the
17 applicant or registrant. During this period, the applicant or registrant may institute an
18 action in an appropriate court for a declaratory judgment as to whether the information
19 is subject to protection under this section.

20 **4.1-34-06. Determinations - Rules - Uniformity.**

- 21 1. After providing an opportunity for a hearing, the commissioner may:
22 a. Declare as a pest any form of plant or animal life or virus which is injurious to
23 plants, humans, domestic animals, articles, or substances.
24 b. Determine whether pesticides are highly toxic to humans and whether their use
25 should be restricted.
26 c. Determine standards of coloring or discoloring for pesticides and to subject
27 pesticides to the requirements of subdivision c of subsection 1 of section
28 4.1-34-02.
29 2. The commissioner may adopt appropriate rules for carrying out this chapter, including
30 rules providing for the collection and examination of samples of pesticides or devices.
31 The commissioner also may adopt rules, applicable to and in conformity with the

1 primary standards established by this chapter, prescribed by the United States
2 environmental protection agency with respect to pesticides to provide uniformity
3 among the requirements of the several states and the federal government.

4 **4.1-34-07. Enforcement.**

5 The commissioner shall examine pesticides or devices for compliance with this chapter. If
6 after examination the commissioner intends to initiate criminal proceedings against any person,
7 the commissioner shall cause appropriate notice to be given to the person. Any person notified
8 must be given an opportunity to present the person's views, either orally or in writing, with
9 regard to the contemplated proceedings and if thereafter in the opinion of the commissioner it
10 appears the chapter has been violated by the person, the commissioner shall refer the facts to
11 the state's attorney for the county in which the violation has occurred with a copy of the results
12 of the analysis or the examination of the article. The commissioner is not required to report for
13 prosecution or for the institution of libel proceedings minor violations of this chapter if the
14 commissioner believes the public interests will be best served by a suitable written notice of
15 warning. A state's attorney to whom any violation is reported under this section, without delay,
16 shall cause appropriate proceedings to be instituted and prosecuted in the proper court of
17 jurisdiction. The commissioner, by publication in the manner the commissioner prescribes, shall
18 give notice of all judgments entered in actions instituted under the authority of this chapter.

19 **4.1-34-08. Stop-sale orders.**

20 The commissioner may issue and enforce a stop-sale order to the owner or custodian of
21 any pesticide when the commissioner finds that the product is being offered for sale in violation
22 of this chapter. The order must direct the product be held at a designated place until released in
23 writing by the commissioner. The owner or custodian of the product has the right to petition a
24 court of competent jurisdiction in the county where the product is found for an order releasing
25 the product for sale in accordance with the findings of the court.

26 **4.1-34-09. Exemptions.**

- 27 1. The penalties provided for violations of section 4.1-34-02 do not apply to:
28 a. A carrier while lawfully engaged in transporting a pesticide within this state, if the
29 carrier, upon request, permits the commissioner to copy all records showing the
30 transactions in and movement of the articles.

- 1 b. A public official of this state or the federal government engaged in the
2 performance of official duties.
- 3 c. The manufacturer or shipper of a pesticide for experimental use only:
4 (1) By or under the supervision of an agency of this state or of the federal
5 government authorized by law to conduct research in the field of pesticides;
6 or
7 (2) By others if the pesticide is not sold and if the pesticide container is plainly
8 and conspicuously marked "For experimental use only - Not to be sold",
9 together with the manufacturer's name and address.
- 10 c. A person using, distributing, selling, or offering for sale an unregistered pesticide
11 for which the United States environmental protection agency has granted an
12 emergency exemption for at least one use in North Dakota under section 18 of
13 the federal Act.

- 14 2. An article may not be deemed in violation of this chapter when intended solely for
15 export to a foreign country and when prepared or packed according to the
16 specifications or directions of the purchaser. If not so exported, all the provisions of
17 this chapter apply.

18 **4.1-34-10. Minimum-risk pesticide exemption.**

- 19 1. Section 4.1-34-02 does not apply to any person who distributes, sells, or offers for sale
20 within this state or delivers for transportation or transports in intrastate commerce or
21 between points within this state through any point outside this state a minimum-risk
22 pesticide exempt from registration under the Federal Act, provided the person has
23 obtained a certificate of exemption from the commissioner.
- 24 2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an
25 application with the commissioner. The application must include:
- 26 a. The name and address of the product's manufacturer or distributor;
27 b. The name and brand name of the product;
28 c. A current label for the product; and
29 d. A fee equal in amount to the fee set under section 4.1-34-03 for the registration of
30 a pesticide.

1 3. The commissioner shall remit any fees collected under this section to the state
2 treasurer for deposit in the environment and rangeland protection fund.

3 4. Each exemption from registration covers a designated two-year period beginning
4 January first of each even-numbered year and expiring December thirty-first of the
5 following year.

6 **4.1-34-11. Penalties.**

7 Any person violating this chapter is guilty of an infraction. If a registrant was issued a
8 warning by the commissioner under this chapter, upon violating this chapter, other than
9 subdivision a of subsection 1 of section 4.1-34-02, that registrant is guilty of a class A
10 misdemeanor and the registration of the article with which the violation occurred automatically
11 terminates. A pesticide for which the registration has been terminated may not again be
12 registered unless the pesticide, its labeling, and other material required to be submitted appear
13 to the commissioner to comply with the requirements of this chapter. In addition to any criminal
14 penalty, a person found guilty of violating this chapter or the rules adopted under this chapter is
15 subject to a civil penalty not to exceed one thousand dollars for each violation. The civil penalty
16 may be imposed by a court in a civil proceeding or by the commissioner through an
17 administrative hearing under chapter 28-32.

18 **4.1-34-12. Seizures.**

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

24 a. In the case of a pesticide:

25 (1) If it is adulterated or misbranded;

26 (2) If it has not been registered under section 4.1-34-03;

27 (3) If it fails to bear on its label the information required by this chapter; or

28 (4) If it is a white powder pesticide and is not colored as required under this
29 chapter.

30 b. In the case of a device, if it is misbranded.

1 2. If the pesticide is condemned, after entry of decree, the pesticide must be disposed of
2 by destruction or sale as the court may direct and any proceeds, less legal costs, must
3 be paid to the state treasurer. The pesticide may not be sold contrary to the provisions
4 of this chapter. Upon payment of cost and execution and delivery of a good and
5 sufficient bond conditioned that the pesticide may not be disposed of unlawfully, the
6 court may direct the pesticide be delivered to its owner for relabeling or reprocessing.
7 When a decree of condemnation is entered against the pesticide, court costs and fees
8 and storage and other proper expenses must be awarded against any person
9 intervening as claimant of the pesticide.

10 **4.1-34-13. Cooperation.**

11 The commissioner may cooperate and enter agreements with any other agency of this state
12 or of the federal government or any other state or agency thereof for the purpose of carrying out
13 this chapter and securing uniformity of regulations.

14 **4.1-34-14. Experimental use permits.**

15 If the state is authorized by the administrator of the United States environmental protection
16 agency to issue experimental use permits, the commissioner may:

- 17 1. Issue an experimental use permit to an applicant if the commissioner determines that
18 the applicant requires the permit to accumulate information necessary to register a
19 pesticide use. An application for an experimental use permit may be filed when an
20 application for registration is filed or before or after filing the application.
- 21 2. Prescribe terms, conditions, and the period of time for use under the experimental use
22 permit.
- 23 3. Revoke an experimental use permit if the commissioner finds the permit's terms or
24 conditions are being violated or that the permit's terms and conditions are inadequate
25 to avoid unreasonable adverse effects to human health or the environment.

26 **4.1-34-15. Minimum-risk pesticide - Certificate of exemption.**

- 27 1. Section 4.1-34-02 does not apply to any person who distributes, sells, or offers for sale
28 within this state or delivers for transportation or transports in intrastate commerce or
29 between points within this state through any point outside this state a minimum-risk
30 pesticide exempt from registration under the Federal Act, provided the person has
31 obtained a certificate of exemption from the commissioner.

- 1 2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an
- 2 application with the commissioner. The application must include:
- 3 a. The name and address of the product's manufacturer or distributor;
- 4 b. The name and brand name of the product;
- 5 c. A current label for the product; and
- 6 d. A fee equal in amount to the fee set under section 4.1-34-03 for the registration of
- 7 a pesticide.
- 8 3. The commissioner shall remit any fees collected under this section to the state
- 9 treasurer for deposit in the environment and rangeland protection fund.
- 10 4. Each exemption from registration covers a designated two-year period beginning
- 11 January first of each even-numbered year and expiring December thirty-first of the
- 12 following year.

13 **SECTION 4.** Chapter 4.1-35 of the North Dakota Century Code is created and enacted as
14 follows:

15 **4.1-35-01. Definitions.**

16 As used in this chapter:

- 17 1. "Chemigation" means any process by which chemicals, including pesticides and
- 18 fertilizers, are applied to land or crops through an irrigation system.
- 19 2. "Commissioner" means the agriculture commissioner and includes any employee or
- 20 agent designated by the commissioner.
- 21 3. "Fertilizer" means any fertilizer as defined by section 4.1-40-01.
- 22 4. "Pesticide" means that term defined in section 4.1-33-01.
- 23 5. "State engineer" means the state engineer appointed by the state water commission
- 24 under section 61-03-01.

25 **4.1-35-02. Compliance with rules.**

26 Farm irrigation systems used for chemigation which are designed, constructed, and
27 operated in compliance with rules adopted under this chapter are considered to be in
28 compliance with this chapter.

1 **4.1-35-03. Rules - Standards for chemigation, installation, maintenance, and**
2 **modifications.**

3 The commissioner shall adopt rules regulating chemigation through irrigation systems in
4 this state to minimize the possibility of chemical, pesticide, fertilizer, or other contamination of
5 irrigation water supply and other rules as necessary to implement this chapter. The
6 commissioner may establish by rule standards for application of pesticides and fertilizers
7 through irrigation systems; for installation and maintenance of all equipment and devices used
8 for chemigation purposes; modifications or changes in design, technology, or irrigation
9 practices; or other purposes relating to the use or placement of equipment or devices. The
10 commissioner may adopt rules requiring periodic calibration and inspection of equipment and
11 system operation during periods of chemigation.

12 **4.1-35-04. Inspections - Assistance of state engineer.**

13 The state engineer shall cooperate with the commissioner in the inspection of any irrigation
14 system using chemigation. The state engineer shall inform the commissioner of any violation of
15 this chapter which is discovered in the course of the state engineer's regular inspections of
16 irrigation systems using chemigation.

17 **4.1-35-05. Enforcement.**

- 18 1. The commissioner shall enforce this chapter and any rules adopted under this chapter.
- 19 2. The commissioner may seek an injunction in the district court in the county in which a
20 violation occurs or may issue a cease and desist order to any person for any alleged
21 violation of this chapter or any rules adopted under this chapter.
- 22 3. For the purpose of carrying out the provisions of this chapter, the commissioner and
23 the state engineer may enter upon any public or private premises at reasonable times
24 in order to:
 - 25 a. Have access for the purpose of inspecting any equipment subject to this chapter
26 and the premises on which the equipment is stored or used.
 - 27 b. Inspect or sample lands actually, or reported to be, exposed to pesticides or
28 fertilizers through chemigation.
 - 29 c. Inspect storage or disposal areas.
 - 30 d. Inspect or investigate complaints of injury to humans or animals.

- 1 e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or
- 2 to be applied.
- 3 f. Observe the use and application of a pesticide or fertilizer through chemigation.
- 4 g. Have access for the purpose of inspecting a premise or other place where
- 5 equipment or devices used for chemigation are held for distribution, sale, or use.

6 **4.1-35-06. Penalties.**

- 7 1. Any person who violates a provision of this chapter or any rule adopted under this
- 8 chapter is guilty of a class A misdemeanor.
- 9 2. When construing and enforcing the provisions of this chapter or any rules adopted
- 10 under this chapter, the act, omission, or failure of any officer, agent, or other person
- 11 acting for or employed by any person must in every case also be deemed to be the
- 12 act, omission, or failure of such person as well as that of the person employed.
- 13 3. Any person found to have violated a provision of this chapter or rule adopted under
- 14 this chapter is subject to a civil penalty not to exceed five thousand dollars for each
- 15 violation. The civil penalty may be imposed by a court in a civil proceeding or by the
- 16 commissioner through an administrative hearing under chapter 28-32.

17 **SECTION 5.** Chapter 4.1-36 of the North Dakota Century Code is created and enacted as
18 follows:

19 **4.1-36-01. Pesticide and pesticide container disposal program - Pesticide container**
20 **management - Compensation.**

- 21 1. The definitions contained in section 4.1-33-01 apply to this chapter.
- 22 2. In consultation with an advisory board consisting of the state health officer and director
- 23 of the North Dakota state university extension service, two individuals selected by the
- 24 agriculture commissioner representing agribusiness organizations, and two individuals
- 25 selected by the agriculture commissioner representing farm organizations, the
- 26 commissioner shall continue to implement project safe send. The purpose of the
- 27 project is to:
- 28 a. Collect and either recycle or dispose of unusable pesticides and unusable
- 29 pesticide containers. The commissioner shall provide for the establishment and
- 30 operation of temporary collection sites for the pesticides and pesticide containers.

1 The commissioner may limit the type and quantity of pesticides and pesticide
2 containers acceptable for collection.

3 b. Promote proper pesticide container management. In consultation with the director
4 of the North Dakota state university extension service, the commissioner shall
5 evaluate and promote proper methods of pesticide container management,
6 including information on the variety of pesticide containers available.

7 3. Any entity collecting pesticide containers or unusable pesticides shall manage and
8 dispose of the containers and pesticides in compliance with applicable federal and
9 state requirements. When called upon, any state agency shall assist the commissioner
10 in implementing the project.

11 4. For services rendered in connection with the design and implementation of this
12 project, the advisory board members selected by the commissioner are entitled to
13 reimbursement for mileage and travel expenses in the same manner and for the same
14 amounts provided for state employees and officials. Compensation and expense
15 reimbursement must be paid from the environment and rangeland protection fund.

16 **4.1-36-02. Project scope and evaluation.**

17 The project described in section 4.1-36-01 must occur in areas to be determined by the
18 agriculture commissioner in consultation with the advisory board described in section 4.1-36-01.

19 **4.1-36-03. Project safe send pesticide and pesticide container collection - User fees.**

20 The agriculture commissioner, in consultation with the advisory board for the project safe
21 send pesticide and pesticide container disposal program, may charge a fee for collection of
22 rinsate. The fees must be established at a level that will generate enough revenue to cover the
23 cost of disposal associated with the rinsate that is collected. Collections from this fee must be
24 deposited in the environment and rangeland protection fund.

25 **4.1-36-04. Report on pesticide container disposal program.**

26 The agriculture commissioner shall submit a biennial report to a joint meeting of the house
27 of representatives and senate agriculture committees on the status of the pesticide container
28 disposal program.

29 **SECTION 6.** Chapter 4.1-37 of the North Dakota Century Code is created and enacted as
30 follows:

1 **4.1-37-01. Anhydrous ammonia safety rules.**

2 The agriculture commissioner shall adopt rules necessary to implement this chapter and
3 adopt the 2014 American national standard safety requirements for the storage and handling of
4 anhydrous ammonia. The commissioner may adopt rules that deviate from the 2014 American
5 national standard safety requirements if certain provisions of the standard impose undue
6 hardship or if literal adherence to the provisions fails to provide adequate safety.

7 **4.1-37-02. Definition.**

8 As used in this chapter, "anhydrous ammonia storage facility" means a bulk anhydrous
9 ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which
10 is owned or operated by a user or vendor of anhydrous ammonia.

11 **4.1-37-03. License required - Anhydrous ammonia facilities constructed after June 30,**
12 **1985.**

13 The owner or operator of an anhydrous ammonia storage facility shall apply to the
14 agriculture commissioner and to the board of county commissioners for a license to site and
15 operate the facility. An anhydrous ammonia storage facility may not be operated without a
16 license issued by the agriculture commissioner and the board of county commissioners of the
17 county in which the facility is located. Any permanent anhydrous ammonia storage facility
18 constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may
19 receive a license under this chapter regardless of noncompliance with the siting requirements.
20 The commissioner or the board may deny a license for failure to remit the proper fee for failure
21 to comply with the siting requirements of this chapter and rules adopted under this chapter if
22 constructed after June 30, 1985, or for failure to comply with local siting requirements. The
23 agriculture commissioner also may deny a license if the facility does not meet the initial
24 inspection standards required by this chapter and by any rules adopted under this chapter. To
25 obtain a license, an applicant shall submit with the application two sets of drawings or
26 photographs showing, and two signed affidavits stating, the facility has been measured and
27 meets the siting requirements. The drawings or photographs must show the proposed location
28 of the tank and the surroundings in all directions. A set of drawings or photographs must be
29 provided to the agriculture commissioner and a set must be provided to the board of county
30 commissioners.

1 **4.1-37-04. State license fee.**

2 The agriculture commissioner shall charge a one-time twenty-five dollar fee for a license for
3 each anhydrous ammonia storage facility and an additional one hundred dollars for each retail
4 and storage site. Expansion of an existing anhydrous ammonia storage facility does not require
5 reapplication for licensing, but all siting requirements must be met. The license is valid
6 indefinitely but may not be transferred. A new license is required when an anhydrous ammonia
7 storage facility changes ownership.

8 **4.1-37-05. State siting requirements - Anhydrous ammonia storage facilities**
9 **constructed after June 30, 1985.**

10 For facilities constructed after June 30, 1985:

- 11 1. Any anhydrous ammonia storage facility with a container nominal capacity of less than
12 one hundred thousand gallons [378541.2 liters] must be located at least:
- 13 a. Fifty feet [15.24 meters] from the line of any adjoining property, which may be
14 built upon, or any highway or railroad mainline.
- 15 b. Four hundred fifty feet [137.16 meters] from any place of public assembly or
16 residence, other than the company's business office.
- 17 c. Seven hundred fifty feet [213.36 meters] from any institutional residence.
- 18 2. Any anhydrous ammonia storage facility with container nominal capacity of one
19 hundred thousand gallons [378541.2 liters] or more must be located at least:
- 20 a. Fifty feet [15.24 meters] from the property line of adjoining property, which may
21 be built upon, or any highway or railroad mainline.
- 22 b. Six hundred feet [182.88 meters] from any place of public assembly or residence,
23 other than the company's business office.
- 24 c. One thousand feet [300.48 meters] from any institutional residence.
- 25 3. Upon relocation of any permanent storage container to an anhydrous ammonia
26 storage facility, the container must be hydrostatically pressure tested at the maximum
27 allowable working pressure of the vessel, wet fluorescent magnetic particle tested,
28 also referred to as black light tested, or any other acceptable testing method as
29 determined by the agriculture commissioner. Before the container may be put into
30 service and before licensing may occur, proof of testing must be supplied to the board
31 of county commissioners and the agriculture commissioner.

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

6 **4.1-37-06. Transfer hose requirements.**

- 7 1. Any transfer hose utilized at an anhydrous ammonia storage facility:
- 8 a. Which is a liquid transfer hose and is not drained of liquid upon completion of
9 transfer operations must be equipped with an approved shutoff valve at the
10 discharge end.
- 11 b. Must have a hydrostatic relief valve or equivalent must be installed in each
12 section of hose or pipe in which liquid ammonia can be isolated between shutoff
13 valves to relieve the pressure that could develop from the trapped liquid. If an
14 equivalent pressure relief device is used, the maximum accumulated pressure
15 possible within the system may not exceed the limits of the system. A hydrostatic
16 relief valve must be installed between each pair of valves in which liquid is
17 trapped. The start-to-discharge pressure setting of the relief valve must not be
18 less than three hundred fifty pounds per square inch [2413.18 kilopascals] gauge
19 nor more than four hundred pounds per square inch [2757.92 kilopascals] gauge.
- 20 c. Must have etched, cast, or impressed on the outer coating all of the following:
- 21 (1) The words "ANHYDROUS AMMONIA".
- 22 (2) The maximum working pressure of the transfer hose.
- 23 (3) The name of the manufacturer of the hose.
- 24 (4) The date of manufacture or the expiration date of the hose.
- 25 d. Which is cut, scraped, cracked, or weathered so that the inner white cord is
26 visible must be replaced. A transfer hose with an expiration date printed on the
27 hose must be replaced prior to that date. Transfer hoses without an expiration
28 date must be replaced as follows:
- 29 (1) Rayon hoses must be replaced within two years of the date of manufacture.
- 30 (2) Nylon hoses must be replaced within four years of the date of manufacture.

1 (3) Steel-reinforced hoses must be replaced within six years of the date of
2 manufacture.

3 2. Notwithstanding the replacement dates determined under this subdivision d of
4 subsection 1 for transfer hoses with or without an expiration date, an additional year
5 must be allowed for replacement of transfer hoses in order to take into account delays
6 in the original installation of transfer hoses.

7 **4.1-37-07. Pressure relief devices.**

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

18 **4.1-37-08. Inspection.**

- 19 1. The agriculture commissioner shall develop and implement an initial and periodic
20 inspection program for anhydrous ammonia storage facilities.
- 21 2. The agriculture commissioner shall inspect each anhydrous ammonia storage facility
22 at least once every five years and may inspect any implement of husbandry designed
23 to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage
24 facility.
- 25 3. The agriculture commissioner may inspect any anhydrous ammonia storage facility if
26 the commissioner has reason to believe violations of safety standards exist.
- 27 4. The agriculture commissioner may revoke or suspend the license of any anhydrous
28 ammonia storage facility for a violation of this chapter or the rules adopted under this
29 chapter. The commissioner may order the discontinuance of use of any implement of
30 husbandry designed to apply anhydrous ammonia which is found unsafe or
31 hazardous.

1 **4.1-37-09. Reinstalled and secondhand anhydrous ammonia storage containers -**
2 **Requirement.**

- 3 1. A person intending to store anhydrous ammonia in a reinstalled or secondhand
4 container, including a nurse tank, shall furnish the agriculture commissioner with:
5 a. Evidence that the container is registered with the national board of boiler and
6 pressure vessel inspectors; or
7 b. The manufacturer's data report for the container.
8 2. Subsection 1 is only applicable to the owner of an anhydrous ammonia storage
9 container installed in this state before November 1, 1987, if the storage container is
10 reinstalled at another location.

11 **4.1-37-10. Use of fees - Safety promotion - Administration - Inspections.**

12 All fees collected under this chapter must be used by the agriculture commissioner to
13 promote safety in anhydrous ammonia use and storage, administer the program, and inspect
14 facilities.

15 **4.1-37-11. Prohibitions.**

16 The following actions are prohibited:

- 17 1. Filling a nurse tank directly from a railcar;
18 2. Filling or using a nurse tank that has an outdated hose;
19 3. Filling or using a nurse tank that has outdated relief valves;
20 4. Towing more than two nurse tanks on a public road;
21 5. Filling department of transportation transport containers not meeting the requirements
22 of the department of transportation;
23 6. Filling anhydrous ammonia storage containers not meeting the requirements of this
24 chapter;
25 7. Filling a storage container or nurse tank while unattended;
26 8. Making repairs or additions of appurtenances directly to pressurized storage
27 containers or nurse tanks by any individual not authorized under rules adopted by the
28 commissioner;
29 9. Painting or obscuring the American society of mechanical engineers data plates on
30 storage containers or nurse tanks;

1 10. Painting hydrostatic safety and safety relief valves on storage containers or nurse
2 tanks;

3 11. Filling nonrefrigerated storage containers or nurse tanks beyond the filling densities
4 permitted by the American national standards institute K61.1, section 5.9.1; and

5 12. Using the American society for testing and materials A-53 type f piping for anhydrous
6 ammonia piping systems.

7 **4.1-37-12. Anhydrous ammonia - Bulk delivery.**

8 Upon obtaining a commercial driver's license with an endorsement for hazardous materials,
9 an individual may transport anhydrous ammonia in a bulk delivery vehicle and fill nurse tanks
10 with anhydrous ammonia from the bulk delivery vehicle.

11 **4.1-37-13. Hydrostatic test procedures.**

12 Any hydrostatic test conducted under section 4.1-37-05 must comply with the requirements
13 of the national board inspection code (ANSI-NB 23) and be conducted in a manner approved by
14 the agriculture commissioner.

15 **4.1-37-14. Wet fluorescent magnetic particle test procedures.**

16 Any wet fluorescent magnetic particle test of a pressure vessel weld conducted under
17 section 4.1-37-05 must comply with the requirements of the society for nondestructive testing
18 SNT-TC-1A standard and must be conducted by a person certified as a level II technician by the
19 society.

20 **4.1-37-15. Enforcement.**

- 21 1. The agriculture commissioner shall enforce the requirements of this chapter and any
22 rules issued under it.
- 23 2. The commissioner may bring an action to enjoin the violation or threatened violation of
24 this chapter, or any rule issued pursuant to this chapter, in the district court of the
25 county in which the violation occurs or may occur.
- 26 3. The agriculture commissioner may issue a cease and desist order to any person
27 allegedly violating this chapter. If any person violates the cease and desist order, the
28 commissioner shall file the appropriate criminal complaint.
- 29 4. The agriculture commissioner may enter upon any public or private premises at
30 reasonable times to:

- 1 a. Inspect any equipment subject to this chapter and the premises on which the
2 equipment is stored or used;
- 3 b. Inspect or investigate complaints; or
- 4 c. Inspect any premises or other place where anhydrous ammonia or related
5 devices are held for distribution, sale, or use.
- 6 5. If a civil penalty is imposed under section 4.1-37-16 by the agriculture commissioner
7 through an administrative hearing and the civil penalty is not paid, the commissioner
8 may initiate a civil action in any appropriate court. Additionally, the commissioner may
9 suspend or revoke a license issued under this chapter for failure to pay a civil penalty
10 within thirty days after a final determination is made.

11 **4.1-37-16. Penalty.**

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

21 **SECTION 7.** Chapter 4.1-38 of the North Dakota Century Code is created and enacted as
22 follows:

23 **4.1-38-01. Risk management program - Anhydrous ammonia.**

24 To determine compliance with the risk management program requirements set forth in
25 section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30,
26 2011, the agriculture commissioner may:

- 27 1. Request information from any person that:
 - 28 a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
 - 29 b. Is required to comply with the risk management program requirements;
- 30 2. Conduct inspections of any person that:
 - 31 a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and

- 1 b. Is required to comply with the risk management program requirements; and
2 3. Obtain and review risk management plans required under 40 Code of Federal
3 Regulations, part 68, as amended through June 30, 2011, and other records
4 applicable to any person that:
5 a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
6 b. Is required to comply with the risk management program requirements.

7 **4.1-38-02. Risk management program - Enforcement authority.**

8 If the agriculture commissioner determines there is noncompliance on the part of any
9 person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is
10 required to comply with the risk management program requirements referenced in section
11 4.1-38-01, the agriculture commissioner may:

- 12 1. Bring an action to enjoin a violation or a threatened violation;
13 2. Issue a cease and desist order; and
14 3. Impose a civil penalty through an administrative hearing in an amount not exceeding
15 ten thousand dollars per day for each violation.

16 **SECTION 8.** Chapter 4.1-39 of the North Dakota Century Code is created and enacted as
17 follows:

18 **4.1-39-01. Crop protection product harmonization and registration board - Recovery**
19 **of funds.**

20 The crop protection product harmonization and registration board may accept funds for
21 expenses paid relating to the registration of pesticides or donations offered to or for the benefit
22 of the board. All moneys received under this section must be deposited in the minor use
23 pesticide fund to pay expenses relating to the registration of pesticides or for the specific
24 purpose for which they are given. Whenever possible, the board shall attempt to recover funds
25 expended relating to the registration of pesticide. The board shall adopt rules to administer this
26 section.

27 **4.1-39-02. Crop protection product harmonization and registration board -**
28 **Membership - Duties - Grants.**

- 29 1. The crop protection product harmonization and registration board consists of:
30 a. The governor or the governor's designee;
31 b. The agriculture commissioner or the commissioner's designee;

- 1 c. The chairman of the house agriculture committee or the chairman's designee;
- 2 d. The chairman of the senate agriculture committee or the chairman's designee;
- 3 e. A member of the house or senate agriculture committee who is not a member of
- 4 the faction in which the committee chairman is a member, appointed by the
- 5 legislative management chairman;
- 6 f. A crop protection product dealer in the state appointed by the governor from a list
- 7 of three nominees submitted by the North Dakota agricultural association;
- 8 g. A consumer of crop protection products appointed by the governor from a list of
- 9 three nominees submitted by the North Dakota grain growers association;
- 10 h. A consumer of crop protection products appointed by the governor from a list of
- 11 three nominees submitted by the North Dakota oilseed council;
- 12 i. A representative of the crop protection product manufacturing industry appointed
- 13 by the chairman of the legislative management; and
- 14 j. The director of the North Dakota state university agricultural experiment station.
- 15 2. The representative of the crop protection product manufacturing industry and the
- 16 director of the agricultural experiment station shall serve as nonvoting members. The
- 17 governor or the governor's designee shall serve as chairman of the board.
- 18 3. The board shall:
- 19 a. Identify and prioritize crop protection product labeling needs;
- 20 b. Explore the extent of authority given to this state under the Federal Insecticide,
- 21 Fungicide, and Rodenticide Act [7 U.S.C. 136a];
- 22 c. Identify the data necessary to enable registration of a use to occur in a timely
- 23 manner;
- 24 d. Determine necessary research to fulfill the data requirements for activities listed
- 25 in this section;
- 26 e. Request the agriculture commissioner to pursue specific research funding
- 27 options from public and private sources;
- 28 f. Request the North Dakota state university agricultural experiment station to
- 29 pursue specific research to coordinate registration efforts; and
- 30 g. Pursue opportunities to make more crop protection product options available to
- 31 state agricultural producers through any means the board determines advisable.

1 4. The board may contract with a consultant to provide studies, research, or information
2 regarding crop protection product registration and labeling needs.

3 5. The board may administer a grant program through which agriculture commodity
4 groups may apply for funds to be used to address issues related to the registration of
5 crop protection products. To be eligible for a grant, an applicant must submit an
6 application to the board requesting a specific amount of funds, specifying the exact
7 purposes for which the grant would be used, and providing a detailed timetable for the
8 use of the grant funds. The board may impose any additional conditions it determines
9 appropriate for grant recipients, including requiring periodic reports and furnishing of
10 matching funds. The board may terminate funding of a previously approved grant at
11 any time if the board is dissatisfied with the performance of the grant recipient.

12 6. The board may use not more than fifteen percent of the funds under its supervision for
13 administrative purposes, including the cost of contracting for administrative services
14 and reimbursement of board member expenses. The members of the board who are
15 members of the legislative assembly are entitled to compensation and expense
16 reimbursement from the legislative council for attendance at board meetings at the
17 rate provided for members of the legislative assembly for attendance at interim
18 committee meetings.

19 7. The board may adopt rules to implement this section.

20 **4.1-39-03. Crop protection products - Canadian labels.**

21 The agriculture commissioner, with the advice and consent of the appropriate agricultural
22 commodity group, may authorize the sale and use in this state of a crop protection product that
23 has a Canadian label, if the commissioner determines that a crop protection product having an
24 American label contains substantially similar active ingredients and that the importation and use
25 of the product with a Canadian label does not violate federal law. The commissioner shall
26 require an applicator to possess the American label and apply the product in accordance with
27 the American label provisions.

28 **4.1-39-04. Special local needs exemption - Tolerances.**

29 The agriculture commissioner, in cooperation with the environmental protection agency,
30 shall use tolerance data established or obtained in North America in pursuing special local

1 needs exemptions for crop protection products under the Federal Insecticide, Fungicide, and
2 Rodenticide Act [7 U.S.C. 136 et seq.].

3 **4.1-39-05. Crop protection products - Registration process - Joint labeling.**

4 The governor and the agriculture commissioner shall work with all appropriate public and
5 private entities to foster the development of a single, uniform process for the joint North
6 American labeling of crop protection products not available for sale and use in this state as of
7 April 19, 1999.

8 **4.1-39-06. Crop protection products - Request to petition for registration.**

9 On the written request of any agricultural commodity group, the agriculture commissioner
10 shall petition the environmental protection agency for the American registration of a crop
11 protection product approved for use in Canada.

12 **4.1-39-07. Environment and rangeland protection fund.**

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

19 **4.1-39-08. Minor use pesticide fund - Continuing appropriation.**

20 The minor use pesticide fund is created as a special fund in the state treasury. All moneys
21 in the fund are appropriated on a continuing basis to the crop protection product harmonization
22 and registration board for the purpose of conducting or commissioning studies, investigations,
23 and evaluations regarding the registration and use of pesticides for minor crops, minor uses,
24 and other uses as determined by the board.

25 **SECTION 9.** Chapter 4.1-40 of the North Dakota Century Code is created and enacted as
26 follows:

27 **4.1-40-01. Definitions.**

28 As used in this chapter:

- 29 1. "Brand" means a term, design, or trademark, used in connection with one or several
30 grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil
31 amendments, or plant amendments.

- 1 2. "Bulk" means in a nonpackaged form.
- 2 3. "Compost" means a material derived primarily or entirely from biological
- 3 decomposition of vegetative organic matter or animal manure that may have inorganic
- 4 fertilizer added to promote decomposition.
- 5 4. "Deficiency" means an amount of plant nutrient or active ingredient found by analysis
- 6 to be less than the amount guaranteed, resulting from a lack of plant nutrient, active
- 7 ingredients, or uniformity.
- 8 5. "Distributor" means a person who imports, consigns, manufactures, produces,
- 9 compounds, mixes, or blends or who sells or offers for sale fertilizer, fertilizer
- 10 materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments
- 11 in this state.
- 12 6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients,
- 13 specialty fertilizers, soil amendment, or plant amendment in a manner for which the
- 14 product was intended.
- 15 7. "Fertilizer" means any substance containing one or more recognized plant nutrients
- 16 which is used for its plant nutrient content and which is designed for use or claimed to
- 17 have value in promoting plant growth, except unmanipulated animal and vegetable
- 18 manures, marl, lime, limestone, wood ashes, and other products excluded by rule of
- 19 the commissioner.
- 20 8. "Fertilizer material" means a fertilizer which:
- 21 a. Contains no more than one of the primary plant nutrients;
- 22 b. Has approximately eighty-five percent of its primary plant nutrient content present
- 23 in the form of a single chemical compound; or
- 24 c. Is derived from a plant or animal residue or byproduct or a natural material
- 25 deposit and has been processed in such a way that its content of primary plant
- 26 nutrients has not been materially changed except by purification or concentration.
- 27 9. "Grade" means the percentages of total nitrogen, available phosphate, and soluble
- 28 potassium or soluble potash stated in the same terms, order, and percentages as in
- 29 the "guaranteed analysis".
- 30 10. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.

- 1 11. "Investigational allowance" means an allowance for variations inherent in the taking,
2 preparation, and analysis of an official sample of fertilizer, soil amendment, or plant
3 amendment.
- 4 12. "Label" means all written, printed, or graphic materials upon or accompanying any
5 fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant
6 amendment and any printed material or media announcements used in promoting their
7 sale.
- 8 13. "Licensee" means a person licensed by the commissioner to distribute a fertilizer,
9 fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant
10 amendment.
- 11 14. "Manipulated" means to have manufactured, blended, or mixed fertilizers, fertilizer
12 materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments,
13 or to have treated in any manner any animal or vegetable manures, including
14 mechanical drying, grinding, pelleting, and other means, or by adding other chemicals
15 or substances.
- 16 15. "Micronutrient" means a fertilizer that contains only essential chemical elements that
17 are required at low levels for normal plant growth.
- 18 16. "Mobile mechanical unit" means any portable machine or apparatus used to blend,
19 mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers,
20 soil amendments, or plant amendments.
- 21 17. "Official sample" means any sample of fertilizer, fertilizer material, micronutrients,
22 specialty fertilizer, soil amendment, or plant amendment, taken and designated as
23 "official" by the commissioner.
- 24 18. "Organic" in reference to fertilizer nutrients, means only naturally occurring
25 substances, generally recognized as the hydrogen compounds of carbon and their
26 derivatives or synthetic products of similar composition with a water insoluble nitrogen
27 content of at least sixty percent of the guaranteed total nitrogen.
- 28 19. "Percent" or "percentage" means the percentage by weight.
- 29 20. "Plant amendment" means a substance applied to plants or seeds which is intended to
30 improve germination, growth, yield, product quality, reproduction, flavor, or other
31 desirable characteristics of plants except fertilizers, unless the fertilizer is represented

1 to contain, as an active ingredient, a substance other than a primary plant nutrient or
2 micronutrient, or is represented as promoting plant growth by supplying something
3 other than a primary plant nutrient or micronutrient.

4 21. "Plant nutrient" means a substance generally recognized as beneficial for plant
5 growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron,
6 chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

7 22. "Primary plant nutrients" means nitrogen, phosphate, and potash.

8 23. "Registrant" means the person who registers fertilizers, soil amendments, or plant
9 amendments under this chapter.

10 24. "Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers,
11 soil amendments, or plant amendments means:

12 a. Transferring or offering to transfer ownership: through a sale, exchange, gift, or
13 distribution; or

14 b. Receiving, accepting, holding, or possessing for sale, exchange, gift or
15 distribution.

16 25. "Soil amendment" means any substance intended to improve the characteristics of the
17 soil except unmanipulated animal or vegetable manures, pesticides, and fertilizers,
18 unless the fertilizer is represented to contain, as an active ingredient, a substance
19 other than a primary plant nutrient or micronutrient or is represented as promoting
20 plant growth by supplying something other than a primary plant nutrient or
21 micronutrient.

22 26. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.

23 27. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

24 **4.1-40-02. Product registration - Fees.**

25 1. Each brand and grade of fertilizer, fertilizer material, micronutrient, specialty fertilizer,
26 soil amendment, and plant amendment must be registered in the name of the person
27 whose name appears upon the label before being offered for sale or distributed in this
28 state.

29 2. The application for registration must be submitted to the commissioner on a form
30 furnished by the commissioner and must be accompanied by:

31 a. A current product label; and

- 1 b. A fee of fifty dollars per product.
- 2 3. Each brand and grade registration is effective for a two-year period beginning July first
- 3 and ending June thirtieth of each even-numbered year.
- 4 4. Any request for a registration renewal received after July thirty-first must be assessed
- 5 a penalty of one hundred dollars per product.
- 6 5. a. A distributor is not required to register any product listed in subsection 1 if that
- 7 product is already registered by another person, providing the label complies with
- 8 the issued registration.
- 9 b. A distributor is not required to register a custom-blended fertilizer combination,
- 10 blended to the customer's specification, if the fertilizer combination provided
- 11 contains only products registered under subsection 1.
- 12 c. Compost that is transferred between parties without compensation does not
- 13 require registration.
- 14 6. The agriculture commissioner shall forward all fees received under this section to the
- 15 state treasurer for deposit in the environment and rangeland protection fund.

16 **4.1-40-03. Distributor's license - Fees.**

- 17 1. A person may not distribute any fertilizer, fertilizer material, micronutrient, specialty
- 18 fertilizer, soil amendment, or plant amendment in this state without first obtaining a
- 19 distributor's license from the commissioner.
- 20 2. A license is required for each location or mobile mechanical unit used by a distributor
- 21 in the state.
- 22 3. The application for a license must be submitted on a form furnished by the
- 23 commissioner and must be accompanied by a fee of one hundred dollars.
- 24 4. A license is effective for a two-year period beginning July first and ending June thirtieth
- 25 of each even-numbered year.
- 26 5. Any license renewal application received after July thirty-first must be assessed a
- 27 penalty of one hundred dollars per location.
- 28 6. Any license issued under this section:
- 29 a. Is not transferable;
- 30 b. Must be conspicuously posted at each location used by the distributor; and

1 c. Must be carried in each mobile mechanical unit operated by the distributor in the
2 state.

3 7. The requirements of this section do not apply to persons that distribute only:

4 a. Specialty fertilizers; or

5 b. Seed inoculants.

6 8. The agriculture commissioner shall forward all fees received under this section to the
7 state treasurer for deposit in the environment and rangeland protection fund.

8 **4.1-40-04. Proof of effectiveness.**

9 The commissioner may require proof of claims made for any product covered by this
10 chapter and may require proof of value when used as directed or recommended. The
11 commissioner must rely on data from scientifically designed and reported studies conducted
12 under conditions similar to those in this state under which the product is intended to be used.
13 The commissioner may accept or reject other sources of proof as supplemental evidence.

14 **4.1-40-05. Guaranteed analysis.**

15 1. Guaranteed analysis must be claimed as follows:

16 a. Total Nitrogen (N) _____ percent;

17 b. Available Phosphate (P₂O₅) _____ percent; and

18 c. Soluble Potash (K₂O) _____ percent.

19 2. The total phosphate or degree of fineness, or both, may also be guaranteed, in the
20 case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and
21 other organic phosphatic materials.

22 3. Rules implemented under this chapter may allow or require guarantees for plant
23 nutrients other than nitrogen, phosphorus, and potassium.

24 a. Guarantees under this subsection must be expressed in the form of the element.

25 b. The commissioner may require that the sources of other nutrients, including
26 oxides, salt, and chelates, be stated on the application for registration and
27 included as a parenthetical statement on the label.

28 c. Other beneficial substances or compounds, determinable by laboratory methods,
29 may be guaranteed with permission of the commissioner after consultation with
30 the director of the North Dakota state university extension service.

1 4. Any guaranteed plant nutrients, other substances, or compounds are subject to
2 inspection and analysis according to the methods and rules prescribed by the
3 commissioner.

4 5. a. The commissioner, by rule, may require potential basicity or acidity expressed in
5 terms of calcium carbonate equivalent in multiples of one hundred pounds
6 [45.36 kilograms] per ton [907.18 kilograms].

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

12 **4.1-40-06. Label requirement.**

13 Any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
14 amendment distributed in this state must be labeled.

15 1. If the product is in a container, the label must be plainly printed in English and
16 conspicuously placed on or attached to the container. The label must include:

- 17 a. The net weight of the product;
18 b. The brand;
19 c. The grade, unless no primary nutrients are claimed;
20 d. The guaranteed analysis; and
21 e. The name and address of the registrant.

22 2. If the product is distributed in bulk, a document providing the same information
23 required in subsection 1 must accompany the delivery and be provided to the end user
24 at the time of delivery.

25 3. A fertilizer formulated according to specifications furnished by a consumer prior to
26 mixing must be labeled to show the net weight, the guaranteed analysis or amount of
27 each plant nutrient it contains in pounds [kilograms], and the name and address of the
28 registrant.

29 **4.1-40-07. Inspection fees - Tonnage reports - Penalty.**

30 1. a. An inspection fee of ten dollars or twenty cents per ton [907.18 kilograms],
31 whichever is greater, must be paid to the commissioner on all fertilizer, fertilizer

1 material, micronutrients, specialty fertilizer, soil amendments, and plant
2 amendments distributed in this state.

3 b. This subsection does not apply to:

4 (1) Exchanges of product between manufacturers and distributors; or

5 (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers,
6 soil amendments, or plant amendments sold exclusively in packages of
7 twenty-five pounds [11.34 kilograms] or less.

8 2. a. On or before January thirty-first, each licensed person who distributes a fertilizer,
9 fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
10 amendment to an end user in this state shall:

11 (1) File with the commissioner a form stating the number of net tons [kilograms]
12 of each listed product distributed in this state during the preceding calendar
13 year; and

14 (2) Submit to the commissioner the inspection fee required by this section.

15 b. If a person fails to submit an inspection fee, at the time and in the manner
16 required by this section, the commissioner may impose a penalty of ten dollars or
17 ten percent of the amount due, whichever is greater.

18 3. a. On or before January thirty-first, each licensed person that distributes a fertilizer,
19 fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
20 amendment to a licensed entity in this state shall file with the commissioner a
21 form stating the number of net tons [kilograms] of each listed product distributed
22 in this state during the preceding calendar year.

23 b. If a person fails to file the form, at the time and in the manner required by this
24 subsection, the commissioner may impose a late fee of thirty-five dollars.

25 4. Each distributor shall keep all records regarding purchases and sales for a period of
26 three years. The records may be examined by the commissioner upon request.

27 5. The agriculture commissioner shall forward all fees received under this section to the
28 state treasurer for deposit in the environment and rangeland protection fund.

29 **4.1-40-08. Inspection, sampling, analysis.**

30 1. To determine compliance with this chapter and rules implemented under this chapter,
31 the commissioner may enter real property during regular business hours and access

1 any structure or personal property to sample, inspect, analyze, and test fertilizers,
2 fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant
3 amendments distributed in this state.

4 2. The commissioner shall adopt methods of analysis and sampling from reputable
5 sources such as the Journal of the AOAC International.

6 3. A single package may constitute an official sample. In determining whether any
7 fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
8 amendment is deficient, the commissioner shall only consider the analysis of the
9 official sample.

10 4. If the results of the commissioner's official analysis indicate that a fertilizer, fertilizer
11 material, micronutrient, specialty fertilizer, soil amendment, or plant amendment may
12 be the subject of a penalty or other legal action, the commissioner shall forward the
13 analysis to the registrant at least ten days before the report is submitted to the
14 purchaser. If during the ten-day period no adequate evidence to the contrary is made
15 available to the commissioner by the registrant, the report becomes official.

16 5. The commissioner shall retain any official samples found to be deficient for thirty days
17 following the issuance of the analytical report.

18 6. Upon request, the commissioner shall furnish to the registrant a portion of any sample
19 found to be the subject of a penalty or other legal action.

20 **4.1-40-09. Misbranding.**

21 1. A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient,
22 specialty fertilizer, soil amendment, or plant amendment.

23 2. A fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
24 amendment is misbranded if:

25 a. False or misleading statements concerning the product are disseminated in any
26 manner or by any means;

27 b. The product label carries a false or misleading statement;

28 c. The product is distributed under the name of another product;

29 d. The product is not labeled as required by this chapter or rules implemented under
30 this chapter; or

- 1 e. The product is inaccurately represented as a fertilizer, or is inaccurately
2 represented as containing a plant nutrient or fertilizer unless the plant nutrient or
3 fertilizer conforms to the definition, if any, prescribed in rule by the commissioner.
4 3. In adopting rules, the commissioner shall consider commonly accepted definitions and
5 official fertilizer terms such as those issued by the association of American plant food
6 control officials.

7 **4.1-40-10. Publications.**

8 The commissioner may publish:

- 9 1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients,
10 specialty fertilizers, soil amendments, and plant amendments; and
11 2. Results of analyses based on official samples of fertilizers, fertilizer material,
12 micronutrients, specialty fertilizers, soil amendments, and plant amendments
13 distributed within the state as compared with the analyses guaranteed under
14 sections 4.1-40-05 and 4.1-40-06.

15 **4.1-40-11. Rules.**

16 The commissioner may adopt and enforce rules relating to investigational allowances,
17 definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of
18 fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant
19 amendments.

20 **4.1-40-12. Deficiencies.**

- 21 1. A product is deficient if:
22 a. One or more of its guaranteed primary plant nutrients falls below the
23 investigational allowances and compensations established by rule;
24 b. One or more other guaranteed active ingredients falls below the investigational
25 allowances and compensations as established by rule; or
26 c. The overall index value of the fertilizer is shown below the level established by
27 rule.
28 2. A nonuniformity deficiency in an official sample of mixed fertilizer is not distinguishable
29 from a deficiency due to actual plant nutrient shortage and is properly subject to official
30 action.

1 3. To determine the commercial index value to be applied, the commissioner shall
2 determine at least annually the values per unit of nitrogen, available phosphate, and
3 soluble potash in fertilizers in this state.

4 4. Any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or
5 plant amendment in the possession of a consumer found by the commissioner to be
6 short in weight, a penalty must be assessed to the registrant of the product. Within
7 thirty days after official notice from the commissioner, the registrant of the product
8 shall pay a penalty equal to four times the value of the actual shortage to the
9 consumer.

10 **4.1-40-13. Cancellation of registrations.**

11 1. The commissioner, upon compelling evidence that a registrant, licensee, or distributor
12 used fraudulent or deceptive practices in the evasion or attempted evasion of this
13 chapter or any implemented rule, may:

14 a. Cancel the registration of any brand of fertilizer, fertilizer material, micronutrient,
15 specialty fertilizer, soil amendment, or plant amendment;

16 b. Cancel the license of any distributor;

17 c. Refuse to register any brand of fertilizer, fertilizer material, micronutrient,
18 specialty fertilizer, soil amendment, or plant amendment; or

19 d. Refuse to license any distributor.

20 2. The commissioner shall provide an opportunity for a hearing prior to refusing a
21 registration or revoking a license.

22 **4.1-40-14. Stop-sale orders.**

23 The commissioner may issue a "stop-sale, use, or removal" order to the owner or custodian
24 of any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or
25 plant amendment, if the commissioner finds that the product is being offered for sale in violation
26 of this chapter or any implemented rule. The order must remain in effect until the commissioner:

27 1. Determines that the violation has been corrected;

28 2. Gives written authorization for the disposal of the product; or

29 3. Gives written authorization for the product to be offered for sale.

30 **4.1-40-15. Seizure, condemnation, and sale.**

- 1 1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment,
2 or plant amendment, not in compliance with this chapter or implemented rules, is
3 subject to seizure upon the filing of a complaint by the commissioner with the district
4 court of the county in which the product is located.
- 5 2. If the court finds the product to be in violation of this chapter or any implemented rule
6 and orders its condemnation, the product must be disposed of in any manner
7 consistent with the quality of the product and the laws of the state.
- 8 3. Before ordering the disposition of a product, a court shall give the claimant an
9 opportunity to apply for the release of the product or for permission to process or
10 relabel the product to bring it into compliance with this chapter and implemented rules.

11 **4.1-40-16. Violations - Criminal penalty.**

- 12 1. If evidence from the examination of any fertilizer, fertilizer material, micronutrient,
13 specialty fertilizer, soil amendment, or plant amendment indicates this chapter or the
14 implemented rules have been violated, the commissioner shall notify the registrant,
15 licensee, manufacturer, distributor, or possessor from whom the sample was taken of
16 the violation. Any person notified must be given an opportunity to be heard. After the
17 hearing, either in the presence or absence of the person so notified, the commissioner
18 may certify the facts to the proper prosecuting attorney if evidence exists this chapter
19 or the implemented rules have been violated.
- 20 2. Any person violating this chapter or the implemented rules or that impedes, obstructs,
21 hinders, or otherwise prevents or attempts to prevent the commissioner in the
22 performance of the commissioner's duty under this chapter is guilty of a class A
23 misdemeanor.
- 24 3. All prosecutions involving the composition of a lot of fertilizers, fertilizer material,
25 micronutrients, specialty fertilizers, soil amendments, or plant amendments, require a
26 certified copy of the official analysis signed by the person performing the analysis or
27 that person's assigned agent. The certified and signed copy of the official analysis is
28 prima facie evidence of the composition.
- 29 4. The commissioner is not required to initiate prosecution or seizure proceedings for
30 minor violations of the chapter if the commissioner believes the public interest will be
31 best served by a suitable written warning.

1 5. The commissioner may apply for and the court may grant a temporary or permanent
2 injunction restraining any person from violating or continuing to violate this chapter or
3 any implemented rule, notwithstanding the existence of other remedies at law. An
4 injunction under this section must be issued without bond.

5 **4.1-40-17. Violations - Civil penalty.**

6 Any person that violates this chapter or an implemented rule is subject to a civil penalty in
7 an amount up to two thousand five hundred dollars per violation. The civil penalty may be
8 imposed by a court or by the agriculture commissioner in an administrative hearing.

9 **4.1-40-18. Exchanges between manufacturers.**

10 This chapter may not be construed to restrict or avoid sales or exchanges of fertilizers,
11 fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments
12 to each other by importers, manufacturers, or manipulators that mix fertilizers, fertilizer
13 materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments for sale or
14 as preventing the free and unrestricted shipments of fertilizer, fertilizer materials, micronutrients,
15 specialty fertilizers, soil amendments, or plant amendments to manufacturers or manipulators
16 that have registered their brands as required by this chapter.