Pesticides and Applicators
Laws and Regulations

I. Introduction

The national law concerning registration and use of pesticides is the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the original act was passed in 1947. The next major revision, the Federal Environmental Pesticide Control Act, was approved in 1972, and there have been several significant amendments since then. FIFRA regulates the registration, manufacture, transportation, and use of pesticides. The Environmental Protection Agency (EPA) is the federal agency responsible for developing regulations to implement FIFRA and for enforcement of the regulations under this law.

FIFRA uses a broad definition for the term "pesticide" and includes all of the following types of chemicals:

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<tr>
<th>Pesticide</th>
<th>Organism affected</th>
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<tr>
<td>Herbicide</td>
<td>Plants</td>
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<td>Plant growth regulators</td>
<td>Plants</td>
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<td>Defoliants</td>
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<td>Desiccants</td>
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<td>Insecticide</td>
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<td>Fungicide</td>
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<td>Rodenticide</td>
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<td>Nematicide</td>
<td>Nematodes</td>
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Other categories of pesticides include, but is not limited to, avicides (birds), piscicides (fish), repellents (many insects), attractants (insects), disinfectants (microorganisms), miticides (mites), bactericides (bacteria), acaricides (mites and ticks), slimicides (slime molds), predacides (vertebrate predators), sterilants (insects and vertebrates), mollusccides (snails and slugs), algaeccides (algae), and silvicides (trees).

A. FIFRA provides that an applicator may not use any registered pesticide in a manner inconsistent with its labeling.

1. All pesticides must be used only as directed on the label,
2. All pesticides must be classified as restricted or general use,
3. Persons who buy or use restricted use pesticides must be certified as a competent pesticide applicator,
4. Persons who do not obey the law will be subject to penalties.

B. Section 2(ce) of FIFRA allows the following deviations from the label directions:

1. Pesticide may be applied at any dosage, concentration, or frequency less than listed on the label.
2. A pesticide may be applied to any target pest not listed on the label if the application is to the crop, animal, or site that is listed, unless stated otherwise.

3. A pesticide may be applied with any method of application not prohibited by the label.

4. A pesticide may be mixed with other pesticides or fertilizer when the mixtures are not prohibited on the label.

It is important to note that if problems occur as a result of deviations from the label, the user alone is liable for the consequences.

II. Types of pesticide registration

There are three major types of pesticide registration:

A. Federal registration (a.k.a. Section 3 or Section 3ee registration)

This is a full federal registration, which means all requirements by the EPA have been fulfilled, reviewed and approved. The EPA registration number will appear on the pesticide label.

Supplemental label (a.k.a. Section 2 or Section 2ee registration). Section 2(ee) allows deviations from a Section 3(ee) registration, as noted above. Companies have utilized the Section 2(ee) provision to make recommendations for pesticide use that deviate from the full Section 3(ee) federal registration, e.g., to utilize low pesticide rates on easy-to-control species or to encourage use of specific application equipment. A supplemental label issued by a company is not submitted to the EPA or the state lead agency for approval, because the pesticide has a full Section 3(ee) registration and the deviation is permitted under Section 2(ee). The company does assume liability for non-performance or other adverse effect when the applicator has followed the directions provided under a supplemental (Section 2ee) label. The company includes on the supplemental label the same EPA registration number as appears on the full Section 3(ee) federal label.

B. Special Local Need (SLN) registration [a.k.a. Section 24(c) registration]

This registration is supplemental labeling, which means a federal registration (Section 3 registration) for the product has been approved, and the SLN label modifies the federal label. SLN (Section 24c) registrations allow states to further control how a pesticide is used in their state, including registering additional uses or adding limitations for a federally registered pesticide. These registrations often involve adding application sites, pests, or alternative control techniques to those listed on the federally registered label and are valid only in the state that issued the registration.

A SLN registration is issued by a state lead agency that has an agreement with the EPA to issue Section 24(c) labels following EPA guidelines. Typically the state lead agency is the state department of agriculture. The state agency must determine that an appropriate federally registered pesticide product is not sufficiently available, and a residue tolerance, or exemption from tolerance, must exist. The supplemental label will include an identifying code, including SLN and the two-letter state abbreviation. For example, "SLN ND06004" would mean
"Special Local Need, North Dakota, issued in 2006, and the 4th SLN issued that year".

C. Emergency exemption from registration (a.k.a. Section 18 registration)

This registration is supplemental labeling issued by the EPA and is used when an emergency pest situation arises for which a) there is no feasible alternative control practice and b) no pesticide is registered or the supply of registered product is inadequate. A Section 18 registration allows a pesticide to be sold and used for a non-registered use for a specific period of time. For example, the expected damage period caused by an insect might be from late July through mid August, so the allowed application period might be from July 15 through August 30 and would be valid only for that one growing season. If the emergency condition occurs the next growing season, a new emergency registration must be issued (this assumes full registration is not attained in the interim period).

An emergency exemption cannot be requested by the pesticide registrant but is requested by or on behalf of a party(s) adversely affected by the emergency, such as a growers group (e.g., growers, wheat growers, turf association, vegetable producers, etc.), the state agricultural department, or county extension agent.

An emergency exemption is issued only when there is enough toxicology information available that a temporary residue tolerance can be established on food products. Also, strict record keeping is required, i.e., the dealer must record where the purchaser said the product will be used, and the purchaser/applicator must keep current and detailed records of application.

Note:

1. The reference to "Section 2", "Section 2ee", "Section 3", "Section 3ee", "Section 18", and "Section 24(c)" names the specific sections of the FIFRA, as amended, that describe each type of registration. These terms often are used in oral and written communication, including radio and newspaper stories, to describe these specific types of registration. Thus, it is important to understand that both descriptions are synonymous; e.g., "Special Local Need" and Section 24(c).

2. An applicator must have the label in his/her possession for all applications. When a pesticide has a full federal registration, the label is printed on the container or is attached to the container (often in a sealed plastic envelope). However, Section 18 and Section 24(c) labels are supplemental registrations and are not provided with packaging, yet the applicator must have a copy of the supplemental label in his/her possession in addition to the full label when applying a pesticide as approved via these special registrations. Application based on hearing a radio or television report or reading a newspaper article is not acceptable. The local pesticide dealer should have copies of these special registrations and/or labels should be available via fax or Internet from the chemical manufacturer or state department of agriculture that issued the label.

3. One site with both U.S. and Canada labels is the Crop Data Management System at "http://www.cdma.net". This site includes Section 3 and 2(ee) labels by categories of "Ag/Crop" or "T&O/Non-crop" for turf and ornamentals and non-crop areas. Special Local Need (Section 24(c)) and Emergency Exemption (Section 18) labels might be included, but the local state department of agriculture is the most accurate source for these labels.
III. Classification of pesticides

The EPA is responsible for evaluating the safety of pesticides in the environment, including safety to man, animals, and desirable plants. All pesticides that are approved for use must be classified as general or restricted use.

A. General use pesticides - pesticides that do not harm humans or the environment when applied as the label directs.

B. Restricted use pesticides - pesticides that could cause human injury or environmental damage when applied as directed on the label.

Safety to the applicator or other people who may come in contact with the pesticide is a major criterion used to determine pesticide classification. Restricted use pesticides may only be purchased and applied by someone who is a certified applicator or who is working under supervision of a certified applicator. General use pesticides may be purchased and applied by all citizens.

IV. Categories of applicators


Restricted use pesticides can be purchased and applied only by a certified applicator, or by a person working under direct supervision of a certified applicator. "Direct supervision" means the certified applicator has provided adequate instruction to a competent person and must be able to arrive at the site of the supervised applicator in 30 minutes or less, which essentially infers they must have radio or cell phone communication. Certification requires training or testing for competency in the safe and effective handling and use of pesticides.

FIFRA requires that each state develop a program for certification not only for those who apply restricted use pesticides (private and commercial applicators) but also of those who sell restricted use pesticides (dealers). States may impose more stringent standards than those required by the Federal Government through FIFRA. Certified applicators must be 18 years of age or older.

There are two categories of certified applicators.

A. Private applicator - a person who can apply restricted use pesticides on personal property, on property that is rented or leased, or to property of others without compensation other than trading of personal services between producers of agricultural commodities. For example, the certified applicator applies the restricted use pesticide for a neighboring farm, and the neighbor assists the applicator with some farm work. Examples of private applicators are farmers, ranchers, floriculturists, and orchardists.

B. Commercial applicator - the FIFRA defines a commercial applicator as a person who can apply restricted use pesticides for hire on any property or government workers (public operators) who apply pesticides in their jobs. However, North Dakota and many states expand the commercial
Applicator category to include all pesticide purchases and applications for any purpose or on any property that does not qualify as a private applicator. As expanded, this category includes applicators and dealers both of general use and restricted use pesticides, and not only for agricultural uses, but also for all commercial uses such as agricultural, ornamental, turfgrass, and lawn care; pest management such as mosquito, roach, and rodent control; and specialized uses such as water treatment and drilling bacteria control. Commercial applicators receive training in general areas of safe use and handling of pesticides plus further training in one or more of the following categories:

1. Agricultural pest control (plant and animal)
2. Seed treatment
3. Fumigation
4. Ornamental and turf pest control
5. Greenhouse
6. Right-of-way
7. Public health pest control
8. Research and demonstration pest control
9. Home, industrial, and institutional pest control
10. Wood preservatives
11. Vertebrate
12. Metam-sodium (control of tree and other plant roots invading sewer systems)

V. Standards of competence for certified applicators

The standards of competence for certified applicators, both private and commercial, include an understanding of the following areas: a) the label and labeling information, b) safety, c) environmental effects, d) pests, e) pesticides, f) equipment, g) application techniques, h) laws and regulations, and i) special information required for the category of license issued.

The North Dakota program is outlined in the North Dakota Pesticide Act of 1975. This act created the Pesticide Control Board, consisting of the Commissioner of Agriculture and the Directors of the Cooperative Extension Service and the Agricultural Experiment Station at North Dakota State University. This board is responsible for administering provisions of the North Dakota Pesticide Act and has authority to issue regulations to carry out provisions of the act. The board also is responsible for classification of pesticides in the state, for establishing standards and requirements for certification of applicators of restricted use pesticides, and for issuing experimental use permits in the state according to any agreements with the EPA.

Provisions of the North Dakota law mandate that no license of any classification can be issued to anyone under 18 years of age. Additional requirements for the different types of certified applicators under the North Dakota Pesticide Act are as follows:

A. Private applicators - A private applicator's certification is issued only if competence in application of restricted use pesticides is demonstrated. Competence is demonstrated to the county extension agent of the county of residence in one of the following ways:

1. Attendance at an approved educational seminar, signing a certificate of attendance, and passing an approved examination.
2. Completion of a course of self-instruction and passing a written examination at the appropriate county agent's office.
3. Passing the certification examination for dealers or commercial applicators.

A private applicator must be re-certified at least every three years by attending an approved seminar or by passing an approved examination. The expiration date is April 1. The re-certification must be in the proper category of application.

B. Dealers and commercial applicators - The general requirements for certification of dealers and commercial applicators are:

1. An applicant must pass a commercial certification examination(s) administered by the North Dakota State University extension designate. Dealers and commercial applicators must be certified in all categories for which they sell and/or apply pesticides.
2. An application for certification form must be completed and examination fees must be paid.
3. Dealer and commercial applicator certification must be renewed every third year by attending an approved seminar(s) or passing an approved examination. The expiration date is April 1.
4. Commercial pesticide applicators must provide proof of financial responsibility. Minimum financial responsibility of $100,000 must be provided only at the time of certification, including every third year re-certification, by one of the three alternatives listed below. Thereafter, proof of financial responsibility must be provided on demand to the commissioner of agriculture or inspectors of the North Dakota Department of Agriculture.
   a. A notarized letter from a financial institution (e.g., bank, credit union, etc.) or a certified public accountant attesting to net assets of at least $100,000.
   b. A performance bond of no less than $100,000.
   c. A general liability insurance policy of no less than $100,000.

There are a few waivers of financial responsibility related to applicator certification in North Dakota:

a. A person who consults or recommends only and will not make a pesticide application.
b. A farmer/rancher that must obtain a commercial applicator certification to control noxious weeds on leased Federal lands. (A private applicator is not required to show financial responsibility and a Federal lease essentially is “private land” for management purposes. Because Federal regulations require a commercial applicator certification, this exemption results in Federal lease holders being treated the same as private land owners).
c. An employee of a government agency, e.g., county weed board, university or experiment station, federal agencies such as the Forest Service, Bureau of Reclamation, etc.
d. A dealer only, who will not make a pesticide application.
e. An employee of a commercial pesticide applicator business is not required to provide proof of financial responsibility, but the employer is responsible for providing financial responsibility documentation for employees.
f. A holder of a right-of-way certification who applies pesticides only on non-annual crop land, grasslands, or tame hay for control of noxious weeds.

In summary, financial responsibility under this law relates to people who will be applying pesticides commercially, to protect the interest of people who may be harmed as a result of careless application. People who make recommendations or dealers who do not apply pesticides are not required to show financial responsibility under this law, but would be affected by other business financial responsibility laws. Similarly, this section of the law does not include private applicators, but these applicators would be held responsible for damages and negligence under civil and criminal law.

Note on applicator licensing in other states. The EPA establishes minimum standards for certification and re-certification, and signs an agreement with each state concerning the protocols for training and enforcement. Also, many states require proof of financial responsibility. Thus, the general provisions of the law in each state are similar to North Dakota, and some states choose to have higher standards than the EPA requires. The structure of the program varies somewhat from state to state. In North Dakota, training, testing, and certification record keeping are the responsibility of the North Dakota Extension Service, but enforcement is the responsibility of the North Dakota Department of Agriculture. In Minnesota, all formal certification is responsibility of the Minnesota Department of Agriculture. Applications for certification of commercial applicators and dealers must be made to the Department of Agriculture in St. Paul. They administer the test at several locations in the state each year. Private applicators must pass a take-home test, which is available from the county extension service office in each county. Certification is for 3 years.

VI. Record keeping by dealers and applicators

In addition to requiring certification, the law requires record keeping by a) all dealers, b) all commercial applicators, who are paid for applying pesticides, and c) all private application of restricted use and Section 18 pesticides. Records must be kept for 3 years. The record-keeping law does not apply to private application of general use pesticides, although it is a good management practice for private applicators to keep similar records. Good records may be valuable in a case where a private applicator is falsely accused of causing damage through inappropriate application, such as allowing drift onto adjacent property.

A. Dealer records

The dealer is required to keep complete and accurate records of all purchases and sales of general use, restricted use, and Section 18 emergency use pesticides.

Information for purchases by the dealer must include:

1. Dealer's name and address
2. Pesticide name
3. Quantity of pesticide
4. Date the pesticide was shipped or received
5. Distributor's name (person from whom the pesticide was received).

Information for sales by the dealer must include:

1. Dealer's name and address and identification of person making the sale
2. Name, address, certification number, and signature of private or commercial applicator making the purchase
3. Date of sale
4. Trade name and/or common name and quantity of pesticide sold
5. Intended application site and intended crop for all section 18 (emergency use) pesticides
6. Certification category and expiration date of the certification.
7. Dealers must positively identify all purchasers of restricted-use pesticides.
8. Dealers must keep a running inventory of all restricted use pesticides.

B. Applicator records

Records of pesticide application must be completed and be available for inspection on the day the pesticide is applied. The records must be kept for 3 years from the date of application or date of sale of the pesticide.

1. Commercial applicators are required to keep records of all applications of any pesticide, i.e., both general use and restricted use pesticides, including use or disposal of all pesticide rinsate. A copy of the records must be provided to the client or the applicator must have on file a signed letter giving the applicator permission to keep the records for the client. The record must include the following information:

a. Name and address of the person for whom the pesticide was applied
b. Location where the pesticide was applied (land legal description, grain bin identification number, etc.)
c. Pest(s) controlled
d. Starting and completion time the pesticide was applied (month, day, year, hour of day)
e. Name of person/dealer who supplied the pesticide
f. Trade name of the pesticide, the EPA registration number for restricted use pesticides, and the registrant name that appears on the product label (a few pesticides are sold under one tradename by two or more companies)
g. Environmental conditions at application: Wind direction and estimated speed and air temperature at the time of application. Wind direction should be recorded in degrees (0° to 360°) for most validity in a court of law.

Rights-of-way applicators must record environmental conditions and geographic location in 2-hr increments.

h. Amount of pesticide used including:
   i. Pounds or gallons per acre
   ii. Percentage and/or pounds of active ingredient in the formulated pesticide
   iii. Pounds or gallons of tank mix applied per acre
   i. Specific crops, commodities, and total acreage to which the pesticide was applied, or other
identified unit; possible example is per 1000 ft² for lawn and turf uses
j. Description of equipment used in application
k. Certification number of applicator and signature.

2. Private applicators should keep a record of general use pesticide applications which is a
good management practice. Private applicators are required to keep a record of all restricted use and
Section 18 pesticide applications. The records must include the following information:

a. Location where the pesticide was applied (land legal description, grain bin
identification number, etc.)
b. Time the pesticide was applied (month, day, year, hour of day)
c. Trade name of the pesticide, the EPA registration number for restricted use
pesticides, and identification of the manufacturer of the pesticide
d. Amount of pesticide used, including pounds or gallons per acre and total amount
applied
e. Specific crops, commodities, and total acreage to which the pesticide was applied
f. Certification number of applicator and signature.

Note:

1. A person can use code names for land and equipment on daily records, provided a complete
description for the codes is maintained with the daily record (analogous to definitions for words).
For example, a farm family purchased one-half section of land from the Smith family, and the land
is divided into two fields that they know as "Smith North" and "Smith South". A separate page in
the permanent record could provide the complete description; e.g., Smith North means "(add legal
description)". Or a commercial application business may have two machines, one that is blue and
the other is red or they might be known as Unit 1 and Unit 2; the machines could be designated by
their color or unit number in daily records with an accompanying page that describes the machine
in more detail.

2. The record for application should be finished for that application when the spraying is
completed, although commercial and private applicators must complete their pesticide application
records by the end of each business day. If an application is interrupted, such as by wind, rain, or
equipment breakdown, the record must be completed and a new record started when the application
resumes.

VII. Penalties in North Dakota

FIFRA provides that persons who do not obey the law will be subject to penalties. The North
Dakota Pesticide Act prescribes penalties for failure to observe provisions of the act. Any registrant,
except a private applicator (i.e., commercial applicator, wholesale dealer, retailer, or other
distributor), who knowingly violates any provision of the act shall be guilty of a class A
misdemeanor. Any private applicator who knowingly violates the act shall be guilty of a class B
misdemeanor.

Currently, the penalties for violation of the Pesticide Act may include loss of certification, and
fines and jail sentences. Typically the penalty for a minor offense is suspension of certification for a
fixed period or revocation of certification, with a designated period before they can apply for a new certification including passing the exam. As the severity of the infraction increases, the person can be subject to civil and/or criminal penalties as outlined below:

A. Private applicator

Civil penalty- up to $5,000 fine
Criminal penalty- Class B misdemeanor, up to $5,000 fine and/or 30 days imprisonment

B. Commercial applicator

Civil penalty - up to $5,000 fine
Criminal penalty - Class A misdemeanor, up to $25,000 fine and/or 1 year imprisonment

VIII. Additional provisions of the North Dakota Pesticide Act

The North Dakota Pesticide Act also includes provisions for mixing, loading, application, storage, transportation and disposal of pesticides, and for reports of loss from pesticide application and pesticide accidents.

A. Mixing, Loading, and Application

1. All pesticides shall be applied according to the label.
2. Pesticide applications shall be made in a manner that prevents off-target discharges of pesticides.
3. Pesticide application or loading equipment that is designed to draw water from surface water shall have a properly functioning anti-siphoning device attached to the inlet hose.
4. Applications shall not occur when the atmospheric conditions favor off-target drift of pesticides or prevent the proper deposition of pesticides to the target area.
5. Pesticides shall be applied in a manner that minimizes exposure to animals. Unless permitted by the labeling, an applicator shall take all reasonable precautions that will prevent a pesticide from being applied if unprotected persons are present within the application site or are present in adjacent areas when off-target drift may occur.
6. Pesticide applicators and persons assisting with an application shall follow all safety precautions as specified on the container label.
7. All equipment used in pesticide mixing, loading, and application must be operationally sound and properly calibrated to prevent adverse effects on the environment.
8. Any commercial applicator who mixes, loads, or otherwise uses pesticides shall have immediate access to a spill kit at the loading site containing not less than two buckets, absorptive pillows, or another system for containing leaking nozzles or a pesticide spill. The spill kit requirement does not apply to a person who uses single containers of pre-mixed, ready-to-use pesticides.
9. The product label(s), a legible reproduction of the label(s), or a specimen label of the pesticide(s) that are being applied must be at the application site during the time of
application. Aerial applicators must have the label available at the loading site.

B. Storage

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

2. All pesticides shall be stored in dry, well ventilated spaces in a manner that will not endanger humans, animals, or the environment or contaminate food or feed through release or escape.

3. If a storage area contains a floor drain, it must be sealed or self-contained.

4. Pesticide storage areas must be marked at all entrances.

5. Label-specific safety equipment for all pesticides stored must be available at the immediate storage site.

6. Pesticides shall be secured in a manner to prevent children, unauthorized persons, or animals from gaining entry or access to the stored pesticides.

C. Transportation

1. Pesticides, except bulk pesticides, shall be transported in their original containers and transported in such a secure manner as to avoid breakage of containers, spills, or any other manner of contamination.

2. Pesticides shall not be transported with food stuffs, feed, or any other product or material so as to pose a hazard to humans, animals, or the environment.

3. Equipment contaminated in the transportation of pesticides shall be cleaned and decontaminated prior to any other use.

D. Disposal

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

2. Empty non-returnable pesticide containers shall be triple-rinsed or equivalent on the day of use, and secondary use of such containers that would endanger humans, animals, or the environment is prohibited.

3. Pesticide containers shall be disposed of in accordance with label directions and in a manner that will not endanger humans, animals, or the environment.

E. Reports of loss

In North Dakota, a person (claimant) who feels there is a loss due to negligence of an applicator must file a "report of loss" with the applicator (defendant) and the state department of agriculture. The notice must be sent as a certified letter with return confirmation required, so the claimant has proof that the defendant received the notice.

The form for report of loss is obtained by contacting the North Dakota Department of Agriculture. The report will require at least the following information:

1. Name, address, and phone number of the claimant
2. Type, kind, and location of property allegedly injured or damaged
3. Date the alleged injury or damage occurred
4. Name of the applicator allegedly responsible for the loss or damage
5. If the defendant is not the same person for whom the work was done, the name and owner or occupant of the property for whom the applicator was rendering labor or services.

The report of loss must be filed within 60 days of the date when potential damage was detected or before 50% of the field has been harvested, whichever occurs first. The purpose is to allow the applicator and department of agriculture an opportunity to inspect the damage to verify whether the alleged loss has occurred (without a reasonable deadline, a claim could be filed anytime, such as the middle of winter, when the applicator wouldn't have any opportunity to inspect for wind or hail damage, insect or disease damage, etc. that may be the actual or primary cause of the loss). The claimant must allow reasonable access to gather evidence to the defendant and department of agriculture or their delegates.

Failure to file a report of loss in a timely manner means the claimant forfeits the right to damage claims in civil court. Conversely, if a person tells an applicator about an alleged loss, the applicator must tell the person (claimant) of the need and time requirements for filing a report of loss. If an applicator fails to provide this notice, then the aforementioned deadlines for filing a report of loss no longer apply.

F. Reports of pesticide accidents

Any person who is involved in or causes a pesticide accident that results in adverse effects on animals or the environment must file a report with the North Dakota Commissioner of Agriculture within 24 hours after the accident. The report may be filed by letter, telephone, or e-mail and must include the following:

1. Name of the pesticide
2. Amount of pesticide or tank mix, or both
3. Location of the pesticide accident
4. Time of accident (month, day, year, hour)
5. Estimated wind velocity and direction and temperature at the time of the accident, if outdoors
6. Actions taken to remedy the adverse effects on animals and the environment