

PESTICIDE ACT

Administration: This Act is administered by the Nebraska Department of Agriculture, Bureau of Plant Industry, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2394.

Revisions: This Act was last revised during the 2010 session of the Nebraska Legislature.

Rules: A regulation has been promulgated under this Act, known as Title 25, Chapter 2, Nebraska Administrative Code - Pesticide Regulations.

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2-2622. Act, how cited. Sections 2-2622 to 2-2659 shall be known and may be cited as the Pesticide Act.

2-2623. Legislative intent. The intent of the Pesticide Act is to regulate, in the public interest, the labeling, distribution, storage, transportation, use, application, and disposal of pesticides for the protection of human health and the environment. The Legislature hereby finds that pesticides are valuable to our state's agricultural production and to the protection of humans and the environment from insects, rodents, weeds, and other forms of life which may be pests but that it is essential to the public health and the welfare that pesticides be regulated to prevent adverse effects on humans and the environment. New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as defoliants, desiccants, and plant regulators, but such pesticides may be ineffective, may cause injury to humans, or may cause unreasonably adverse effects on the environment if not properly used. Pesticides may injure humans or animals, either by direct poisoning or by gradual accumulation of pesticide residues in the tissues. Crops or other plants may also be injured by improper use of pesticides, and the drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide used for the purpose of exerting pesticidal action in a crop which is not itself injured by the pesticide may drift and injure other crops or nontarget organisms with which it comes in contact. The monitoring of pesticides in ground water and surface water is essential for human health and the environment. Therefore, it is deemed necessary to provide for regulation of pesticides.

2-2624. Terms, defined. For purposes of the Pesticide Act:

- (1) Active ingredient means:
 - (a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;
 - (b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;
 - (c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or
 - (d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;
- (2) Administrator means the Administrator of the United States Environmental Protection Agency;
- (3) Adulterated means:
 - (a) That the strength or purity of a pesticide falls below the professed standard of quality as expressed on the labeling under which a pesticide is sold;
 - (b) That any substance is substituted wholly or in part for the pesticide; or
 - (c) That any valuable constituent of the pesticide has been wholly or in part abstracted;
- (4) Animal means a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;
- (5) Antidote means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk means any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Commercial applicator means any applicator required by the act to obtain a commercial applicator license;

(9) Dealer means any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(10) Defoliant means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(11) Department means the Department of Agriculture;

(12) Desiccant means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(13) Device means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device does not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(14) Director means the Director of Agriculture or his or her designee;

(15) Distribute means to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(16) Environment includes water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(17) Federal act means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it, as the act and regulations existed on January 1, 2006;

(18) Federal agency means the United States Environmental Protection Agency;

(19) Fungus means any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but does not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(20) Inert ingredient means an ingredient that is not an active ingredient;

(21) Ingredient statement means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, a statement of the percentage of total water-soluble arsenic calculated as elementary arsenic shall be included;

(22) Insect means any of the numerous small invertebrate animals generally having a segmented body and for the most part belong to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(23) Label means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(24) Labeling means all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(25) License holder means any person licensed under the Pesticide Act;

(26) Licensed certified applicator means any person licensed and certified under the act as a commercial applicator, noncommercial applicator, or private applicator;

(27) Misbranded means that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to section 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under section 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or section 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode means an invertebrate animal of the phylum Nematelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator means (a) any applicator who is not a commercial applicator and uses restricted-use pesticides only on property owned or controlled by his or her employer or for a federal entity or state agency or a political subdivision of the state or (b) any employee or other person acting on behalf of a political subdivision of the state who is not a commercial applicator who uses pesticides for outdoor vector control;

(30) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest means:

(a) Any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, excluding humans; or

(b) Any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals, as defined by the department;

(32) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any

biological control agent. Pesticide includes specialty pesticides. Pesticide does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section existed on January 1, 2006, that has been determined by the Secretary of Health and Human Services to be a new animal drug by regulation establishing conditions of use for the article, or that is an animal feed within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), as the section existed on January 1, 2006, bearing or containing a new animal drug;

(33) Pesticide management plan means a management plan for a specific, identified pesticide to implement a strategy to prevent, monitor, evaluate, and mitigate (a) any occurrence of the pesticide or pesticide breakdown products in ground water and surface water in the state or (b) any other unreasonable adverse effect of the pesticide on humans or the environment;

(34) Plant regulator means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(35) Pollute means to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(36) Private applicator means an applicator who is not a commercial applicator or a noncommercial applicator and uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(37) Property means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any vehicle used for transportation;

(38) Restricted-use pesticide means a pesticide classified as a restricted-use pesticide by the federal agency, a state-limited-use pesticide, or any pesticide for which an exemption under section 136p of the federal act has been granted;

(39) Specialty pesticide means (a) a disinfectant, sanitizer, germicide, or biocide or (b) a pesticide labeled solely for use directly on humans or pets or in, on, or around areas associated with the household or home life including lawn and garden and ornamental uses but does not include turf as determined by the director;

(40) State management plan means a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(41) State pesticide plan means the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(42) State-limited-use pesticide means any pesticide included on a list of state-limited-use pesticides by the department pursuant to a pesticide management plan;

(43) Unreasonable adverse effect on humans or the environment means any unreasonable risk to humans or the environment taking into account the severity and longevity of adverse effects of use of the pesticide and also taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. The costs and benefits of a public health pesticide shall also weigh any risks of the use of the pesticide against the health risks to be mitigated or controlled by the use of the pesticide;

(44) Vector means any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including mosquitoes, flies, fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

(45) Weed means any plant that grows where not wanted.

2-2625. Local ordinances and resolutions; preemption; regulatory functions; contracts authorized. Except as specifically provided in the Pesticide Act, the provisions of the act shall preempt ordinances and resolutions by political subdivisions that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides. The department may contract with a city of the metropolitan or primary class it deems qualified to conduct, on a case-by-case basis, any regulatory functions authorized pursuant to the act relating to the disposal of pesticides except those functions relating to the issuance, suspension, or revocation of permits or any order of probation, suspension, immediate suspension, or revocation.

2-2626. Department; powers and duties. The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and

mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2006. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide

management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under section 136p of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on January 1, 2006; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under section 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

- (a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;
 - (b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;
 - (c) Inspect and sample any area where a pesticide is disposed of or stored;
 - (d) Observe the use and application of and sample any pesticide;
 - (e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or
 - (f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;
- (6) To sample, inspect, make analysis of, and test any pesticide found within this state;
- (7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;
- (8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and
- (b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;
- (9) To impose or levy an administrative fine of not more than five thousand dollars on any person who has violated the provisions, requirements, conditions, limitations, or duties imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means any separate activity or day in which an activity takes place;
- (10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;
- (11) To take measures necessary to ensure that all fees, fines, and penalties prescribed by the act and the rules or regulations adopted under the act are assessed and collected;
- (12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;
- (13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;
- (14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

(15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(20) To issue a cease and desist order pursuant to section 2-2649;

(21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(23) To make such reports to the federal agency as are required under the federal act.

2-2627. Pesticide Administrative Cash Fund; created; use; investment. The Pesticide Administrative Cash Fund is hereby created. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the Pesticide Administrative Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-2628. Registration required; when. (1) Except as provided by subsection (2) or (3) of this section, no pesticide shall be distributed in this state or delivered for transportation or transported in intrastate commerce or between points within the state through a point outside the state unless it is registered with the department pursuant to section 2-2629. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.

(2) Registration shall not be required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person if

the pesticide is used solely at the second plant or warehouse as a constituent of a pesticide that is registered under such section.

(3) Registration shall not be required if the pesticide is distributed under the provisions of an experimental-use permit issued by the federal agency.

2-2629. Registration; application; contents; department; powers; confidentiality; agent for service of process.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant, including whether the product is a specialty pesticide, if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require additional information including a full description of the tests conducted and the results of the tests on which claims are based, either before or after approving the registration of a pesticide. The department may request that additional tests or field monitoring be conducted in Nebraska ecosystems, or reasonably similar ecosystems, in order to determine the validity of assumptions used to register pesticides under the federal act.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

2-2630. Label; contents; requirements. (1) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:

(a) The name, brand, or trademark under which the pesticide is distributed;

(b) The name and percentage of each active ingredient and the total percentage of inert ingredients;

(c) Directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;

(d) If the pesticide contains any form of arsenic, the percentage of total water-soluble arsenic, calculated as elementary arsenic;

(e) The name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;

(f) Numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and

(g) A clear display of appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.

(2) The labeling of each pesticide distributed in this state shall state the use classification for which the product is registered.

(3) The label bearing the ingredient statement under subdivision (1)(b) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

(4) Any word, statement, or information required by the Pesticide Act to appear on a label or in labeling of a pesticide or device shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary condition of use.

2-2631. Registration; expiration; renewal. Registration of a pesticide shall expire annually on December 31 unless sooner canceled. A person who applies for renewal of registration shall include in the renewal application only information that is different from the information furnished at the time of the most recent registration or renewal. A registration in effect on December 31 for which a renewal application has been filed and renewal fees have been paid shall continue in effect until the department notifies the applicant that the registration has been renewed or denied renewal.

2-2632. Registration; denial or change in status; grounds; procedure. (1) The department may deny an application for registration of a pesticide under the Pesticide Act or may cancel, suspend, or modify such registration if the department finds that:

(a) The composition of the pesticide does not warrant the proposed claims made for it;

(b) The pesticide, its labeling, or other materials required to be submitted do not comply with the requirements of the Pesticide Act; or

(c) The department has reason to believe that any use of a registered pesticide is in violation of a provision of the act or is dangerous or harmful.

(2) The department shall issue written notice of its denial, cancellation, suspension, or modification and shall give such registrant or applicant an opportunity to make necessary corrections or to have a hearing pursuant to the procedure in section 2-2649.02.

(3) After an opportunity at a hearing for presentation of evidence by interested parties, the department may deny, cancel, suspend, or modify the registration of the pesticide if the department finds that:

(a) Use of the pesticide has demonstrated uncontrollable adverse environmental effects;

(b) Use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;

(c) Even if properly used, the pesticide is detrimental to vegetation except weeds, to domestic animals, or to public health and safety;

(d) A false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature;

(e) The registrant has not complied or the pesticide does not comply with a requirement of the act or the rules and regulations adopted and promulgated under the act;

(f) The composition of the pesticide does not warrant the proposed claims made for it; or

(g) The pesticide, its labeling, or other materials required to be submitted do not comply with the requirements of the act.

2-2633. Registration for special local need; procedure. (1) The department may register a pesticide for additional uses and methods of application not covered by federal regulation but not inconsistent with federal law for the purpose of meeting a special local need.

(2) Before approving a registration under this section, the department shall determine that the applicant meets the other requirements of the Pesticide Act and that a special local need exists.

(3) The department shall notify the federal agency of the issuance of any special local need registration. If the federal agency disapproves of any special local need registration within ninety days after issuance, such registration shall not be effective longer than such time.

2-2634. Registration and renewal fees; late registration fee. (1) As a condition to registration or renewal of registration as required by sections 2-2628 to 2-2633, an applicant shall pay to the department a fee of two hundred dollars for each pesticide to be registered that is not classified as a specialty pesticide by the department and one hundred thirty-five dollars for each pesticide to be registered that is classified as a specialty pesticide by the department, except that the fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee. In no event shall such fee exceed two hundred ten dollars for each pesticide to be registered. All fees collected shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of each such fee to the Noxious Weed Cash Fund as provided in section 2-958;

(b) Sixty dollars of each such fee to the Buffer Strip Incentive Fund as provided in section 2-5106; and

(c) The remainder of each such fee for a pesticide that is not classified as a specialty pesticide, if any, to the Natural Resources Water Quality Fund, and the remainder of each such fee for a pesticide that is classified as a specialty pesticide, if any, to the Pesticide Administrative Cash Fund.

(2) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed in addition to the renewal fee. The purpose of the late registration fee is to cover the administrative costs associated with collecting fees, and all money collected as a late registration fee shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

2-2635. Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process. (1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 2-2636 to 2-2642 who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using restricted-use pesticides only for its own program;

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and do not sell any restricted-use pesticides or bulk pesticides; or

(d) Persons who sell only general-use specialty pesticides.

(3) A pesticide dealer may distribute restricted-use pesticides only to:

(a) A licensed pesticide dealer;

(b) A licensed certified applicator issued a license with the appropriate category for using the restricted-use pesticide being distributed;

(c) An applicator issued a license by another state with the appropriate category for using the restricted-use pesticide being distributed;

(d) A noncertified applicator authorized by the Pesticide Act to apply restricted-use pesticides if the licensed certified applicator supervising the noncertified applicator is issued a license with the appropriate category for using the restricted-use pesticide being distributed; or

(e) Any other person if the pesticide dealer maintains records set out in rules and regulations adopted and promulgated pursuant to the act requiring the person to verify in writing that:

(i) The restricted-use pesticide will be delivered to an applicator described in subdivision (3)(b), (c), or (d) of this section; and

(ii) The applicator receiving the restricted-use pesticide acknowledges and agrees to the distribution.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of twenty-five dollars. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person applying for such license. If such applicant is an individual, the application shall include the applicant's social security number. If such applicant is a partnership, limited liability company, association, corporation, or organized group of persons, the full name of each member of the firm, partnership, or limited liability company or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued.

An application for a duplicate pesticide dealer's license shall be accompanied by a nonrefundable application fee of ten dollars.

All fees collected shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three years and shall provide the department access to examine such records and a copy of any record on request.

2-2636. Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171, as the regulation existed on January 1, 2006, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. Residents of the State of Nebraska are not eligible for reciprocal certification. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use;

(b) Licensed as a private applicator; or

(c) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(5) In order to receive a commercial, noncommercial, or private applicator license, a person shall be at least sixteen years of age.

2-2637. Commercial and noncommercial licenses; classification; testing; Cooperative Extension Service; conduct training sessions. (1) The department may classify commercial and noncommercial licenses under subcategories within categories according to the subject, method, or place of pesticide application.

(2) The director shall establish separate testing requirements for certification and licensing in each category for which the department is responsible and may establish separate testing requirements for licensing in subcategories within a category. All written examinations for certification shall be the property of the department. Any person taking such an examination shall return the examination to the director's authorized agent prior to leaving the examination site.

(3) The Cooperative Extension Service of the University of Nebraska, through its county extension educators and specialists in the State of Nebraska, shall conduct training sessions on the use of restricted-use pesticides for private, commercial, and noncommercial applicators. The programs shall be directed toward thorough comprehension and knowledge on the safe use of restricted-use pesticides. The Cooperative Extension Service shall schedule regular and frequent training sessions and shall issue recommendations to the director of satisfactory training for private, commercial, and noncommercial applicators completing the training.

2-2638. Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process. (1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and shall be a commercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. If the applicant is an individual, the application shall include the applicant's social security number and date of birth. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state.

2-2639. Noncommercial applicator license; application; denial, when; resident agent for service of process. (1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. If the applicant is an individual, the application shall include the applicant's social security number and date of birth. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

2-2640. Commercial and noncommercial applicator licenses; examination required. Each person applying for a license as a commercial or noncommercial applicator shall meet the certification requirement of passing an examination demonstrating that the person:

(1) Is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility; and

(2) Has knowledge of the use and effects of restricted-use pesticides in the categories and subcategories in which the person is to be licensed.

2-2641. Private applicator; qualifications; application for license; requirements; fee.

(1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide in the State of Nebraska for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide use but does not provide the necessary equipment or pesticides.

(3) Every person applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. If the applicant is an individual, the application shall include the applicant's social security number and date of birth.

(4) Application for an original or renewal private applicator license shall be made to the department and accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

2-2642. Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.

(1) Each commercial, noncommercial, and private applicator license shall expire on April 15 following the third year in which it was issued.

(2) Except as provided by subsection (3) of this section, a person having a valid commercial or noncommercial applicator license may renew the license for another three-year period by:

(a) Paying to the department an amount equal to the license fee required by section 2-2638 for commercial applicator licenses or section 2-2639 for noncommercial applicator licenses, if any; and

(b)(i) Undertaking the training approved by the department; or

(ii) Submitting to retesting prior to renewal of the license.

(3) Any person who allows his or her commercial or noncommercial applicator license to expire shall be required to submit to testing prior to the renewal of the license.

(4) The application for renewal of a private applicator license shall be the same as the application for an initial license.

(5) Notwithstanding sections 2-2636 to 2-2642, any individual required to be a licensed certified applicator may use pesticides as a noncertified applicator for only one consecutive sixty-day period of time if:

(a) The individual or his or her employer applies to the department for a license as a licensed certified applicator within ten days of making the first pesticide use. Such license application shall include the name and license number of the licensed certified applicator who is supervising the noncertified applicator;

(b) All pesticide uses made by an individual as a noncertified applicator are made under the direct supervision of a licensed certified applicator; and

(c) The licensed certified applicator provides such training and supervision as is necessary to:

(i) Determine the level of experience and knowledge of the noncertified applicator in the use of a pesticide;

(ii) Provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision;

(iii) Accompany the noncertified applicator to at least one site which would be typical of each type of pesticide use that the noncertified applicator performs;

(iv) Be accessible by voice or electronic means to provide further instructions at all times during the noncertified applicator's use of the pesticide; and

(v) Be able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time as established by the director by rules and regulations. Both the licensed certified applicator and noncertified applicator shall be responsible for the acts of the noncertified applicator and each shall be subject to all penalties and violations under the Pesticide Act. The department may deny or suspend the use of pesticides by a noncertified applicator if it has reasonable cause to believe that such person may not become eligible to become a licensed certified applicator or uses any pesticide in violation of the act.

2-2643. Records; requirements. (1) The department shall require each licensed certified applicator to maintain records of the use of all restricted-use pesticides. The department may by rules and regulations prescribe the information to be included in the records.

(2) The department may require a license holder to keep records of the licensee's use of general-use pesticides. The department may by rules and regulations prescribe the information to be included in the records.

(3) The license holder shall keep records required under this section for a period of three years from the date of the pesticide use.

(4) The license holder shall provide the department access to such records and a copy of any requested record pertaining to the use of pesticides.

2-2643.01. License holder; prohibited acts. A license holder shall not:

(1) Make a pesticide recommendation or use a pesticide in a manner inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state, the federal agency, or the federal act;

(2) Operate in a faulty, careless, or negligent manner;

- (3) Refuse or neglect to keep and maintain the records required by the Pesticide Act or to make reports as required;
- (4) Make false or fraudulent records, invoices, or reports;
- (5) Use fraud or misrepresentation in making an application for a license or renewal of a license; or
- (6) Aid or abet a license holder or an unlicensed person to evade the Pesticide Act, conspire with a license holder or an unlicensed person to evade the act, or allow the license holder's license to be used by another person.

2-2643.02. License holder; duties. A license holder shall comply with the Pesticide Act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. A license holder shall not interfere with the department in the performance of its duties.

2-2643.03. License holder; disciplinary actions; procedure. (1) A license holder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to subdivision (9) of section 2-2626 after: (a) The director determines the license holder has not complied with section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why an order should not be issued; and (c) the director finds that issuing an order is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(2) A license issued under the Pesticide Act may be modified or suspended until the license holder complies with the conditions set out in an order issued by the director or for a specific period of time after: (a) The director determines the license holder has not complied with section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be modified or suspended; and (c) the director finds that issuing an order modifying or suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(3) A license may be immediately suspended prior to hearing if: (a) The director determines an immediate danger to the public health, safety, or welfare exists; and (b) the license holder receives the written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. If a license is suspended under this subsection, the license holder may request a date and time for hearing. The director shall accommodate the requested date and time, if possible. In any event, if the license holder requests that the hearing be held within two business days, the director shall set the date and time for the hearing within two business days of the request. If a license holder does not request a hearing date within fifteen days after the suspension, the director shall establish a hearing date and shall notify the license holder of the date and time of such hearing.

(4) A license may be revoked after: (a) The director determines the license holder has committed serious, repeated, or multiple violations of any of the

requirements of section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and (c) the director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(5) Any license holder who has a license which has been suspended shall cease operating as a license holder until the license is reinstated. Any license holder who has a license which has been revoked shall cease operating as a license holder until a new license is issued.

(6) The director may terminate any proceedings to suspend or revoke a license or to subject a license holder to an order of the director at any time if the reasons for such proceedings no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a license holder may no longer be subject to an order of the director if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(7) Proceedings for license modification, suspension, revocation, or probation shall not preclude the department from pursuing other administrative, civil, or criminal actions.

2-2645. Violation of act; claim of damages; inspection; failure to file report or cooperate with department; effect. (1) A person claiming damages from a pesticide use may file with the department a written report claiming that the person has been damaged. The report shall be filed as soon as possible following the day of the alleged occurrence.

(2) Except as otherwise provided in the Pesticide Act, upon receipt of a report if the department has reasonable cause to believe that a violation of the act has occurred, it shall investigate such report to determine if any violation has occurred and if any further enforcement action shall be taken under the act. The department is not required to investigate any complaint that the department determines is made more than ninety days after the person complaining knew of the damages, is outside the scope of the Pesticide Act, or is frivolous or minor. If a complaint is investigated, the department shall notify the licensee, owner, or lessee of the property on which the alleged act occurred and any other person who may be charged with responsibility for the damages claimed. The department shall furnish copies of the report to such licensee, owner, lessee, or other person upon written request.

(3) The department shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage. The claimant shall permit the department and the licensee to observe, within reasonable hours, the property alleged to have been damaged.

(4) Failure to file a report shall not bar maintenance of a civil or criminal action. If a person fails to file a report or cooperate with the department and is the only person

claiming injury from the particular use of a pesticide, the department may, if in the public interest, refuse to take action or hold a hearing for the denial, suspension, or revocation of a license issued under the act to the person alleged to have caused the damage.

2-2646. Prohibited acts. It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with section 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act whether or not the person committing the act is a licensed certified applicator;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to obtain a license or to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

- (16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;
- (17) To fail to follow any order of the department;
- (18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;
- (19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act;
- (20) To alter or falsify all or part of a license issued by the department; and
- (21) To violate any other provision of the act.

2-2646.01. Pesticide business; owner or operator; liability. Any person who owns or operates a business that uses pesticides on the property of another person for hire or compensation shall be responsible for the acts or omissions of anyone using a pesticide for such business. Such person shall be subject to the same penalties and violations as the applicator.

2-2647. Violations; penalties; Attorney General or county attorney; duties. (1) Any person who commits an unlawful act under the Pesticide Act, any rules and regulations adopted and promulgated under the act, or any final order of the department shall (a) be guilty of a Class III misdemeanor and, upon a subsequent conviction thereof, be guilty of a Class I misdemeanor and (b) be subject to a restraining order, a temporary or permanent injunction, or a mandatory injunction if such person has violated, is violating, or is threatening to violate the act, the rules and regulations adopted and promulgated pursuant to the act, or any final order of the department. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which the violation of the act has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section.

(3) Nothing in this section shall be construed to require the director to report all acts for prosecution if in the opinion of the director the public interest will best be served through other administrative or civil procedures.

2-2648. Violations; civil fine; jurisdiction; Attorney General or county attorney; duties.

(1) Any person who violates any provision of the Pesticide Act, the rules and regulations adopted and promulgated under the act, or any final order of the department may be subject to a civil fine of not more than fifteen thousand dollars for each offense, and in the case of a continuing violation, each day of violation shall

constitute a separate offense. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which the violation of the act has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section.

2-2649. Violations; hearing; order. Whenever the director has reason to believe that any person has violated any provision of the Pesticide Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the department, the director may issue a notice of hearing as provided for in section 2-2649.02 requiring the person to appear before the director (1) to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. If after a hearing the director finds such person to be in violation of the act or the rules and regulations, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission, (2) to determine whether an administrative fine should be imposed or levied against the person pursuant to subdivision (9) of section 2-2626, or (3) to determine whether the license of such person should be denied. Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal actions.

2-2649.01. Violation warning letter; contents. Whenever the director has reason to believe that a violation of any provision of the Pesticide Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the director has occurred, the director may issue a violation warning letter. A violation warning letter shall specify all provisions of the act, rules and regulations, or order alleged to have been violated and the acts or omissions with which the person named in the violation warning letter is charged. A violation warning letter shall become final unless the person named in the violation warning letter, within twenty days after receiving the violation warning letter, requests a hearing before the director. Whenever a hearing is requested pursuant to this section, the director shall issue a notice of hearing as provided for in section 2-2649.02.

2-2649.02. Notice; requirements; hearings; procedure; request for new hearing.
Under the Pesticide Act:

(1) Any notice or order shall be personally served on the license holder, the person named in the notice, or a person authorized by the license holder to receive notices and orders of the department or shall be sent by registered or certified mail, return receipt requested, to the last-known address of the license holder, the person named in the notice, or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department;

(2) A notice to comply under the act shall set forth the acts or omissions with which the license holder or person named in the notice is charged;

(3) A notice of the right of the license holder or person named in the notice to a hearing shall set forth the time and place of the hearing except as provided in subsection (3) of section 2-2643.03. A notice of such right to a hearing shall include notice that the right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the right to a hearing shall include notice of the potential actions that may be taken against the license holder or person named in the notice;

(4) The hearings shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-2643.03, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act;

(5) A license holder or person named in the notice shall be deemed to waive the right to a hearing if such license holder or person does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the license holder or person named in the notice shows the director that he or she had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the license holder or person named in the notice waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-2643.03, the director shall sustain, modify, or rescind the order; and

(6) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. An order of the director becomes final upon the expiration of ten days after the entry of the order if no request for a new hearing is made.

2-2650. Violations; severity of penalty; considerations. Whenever a violation of the Pesticide Act has occurred, the following shall be considered when determining the severity or amount of any administrative or civil fine, the issuance of a cease and desist order, or the disposition of any license:

- (1) The culpability and good faith of and any past violations by such person;
- (2) The seriousness of the violation, including the amount of any actual or potential risk to human health or environment; and
- (3) The extent to which the person derived financial gain as a result of permitting or committing the violation, including a determination of the size of the company itself and the impact on it.

2-2651. Fines; distribution and collection. (1) All money collected as a civil or an administrative fine shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any civil or administrative fine which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper forum of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property.

2-2652. Final judgments; failure to satisfy; effect. (1) A pesticide dealer or a commercial, noncommercial, or private applicator or an applicant for any such license shall not allow a final judgment against the applicant or licensee for damages arising from a violation of a provision of the Pesticide Act to remain unsatisfied for a period of more than thirty days.

(2) Failure to satisfy within thirty days a final judgment resulting from any activity regulated under the act shall result in automatic suspension or denial of the applicable license.

2-2653. Duties and responsibilities of department; subject to appropriation.

Notwithstanding any other provision of the Pesticide Act, the duties and responsibilities of the department under the act shall be subject to adequate federal, cash, and general funding appropriation being made by the Legislature. If adequate funds are not made available under the act, the department shall submit a revised state pesticide plan to the federal agency outlining the current program.

2-2654. Department order; appeal. Any person aggrieved by any order of the department may appeal such order to the district court. Such appeal shall be in accordance with the Administrative Procedure Act.

2-2655. Nebraska aerial pesticide business license; when required; liability; exempt operations. (1) A person shall not apply pesticides by use of an aircraft or cause or arrange aerial pesticide spraying operations to occur on the property of another unless such person holds a Nebraska aerial pesticide business license for the principal departure location of the aircraft to be used. Any person applying pesticides without a principal departure location licensed in this state and who applies pesticides by use of an aircraft within this state may obtain a Nebraska aerial pesticide business license for the principal out-of-state departure location. An individual licensed as a commercial applicator shall apply pesticides by use of an aircraft only under the direct supervision of a person holding a Nebraska aerial pesticide business license. Such supervising license holder is jointly liable with the commercial applicator for any damages caused by the commercial applicator. An individual who is licensed as a commercial applicator with an aerial pest control category may perform aerial operations without the supervision by a person holding a Nebraska aerial pesticide business license if the commercial aerial applicator acquires a Nebraska aerial pesticide business license. For purposes of sections 2-2655 to 2-2659, unless utilizing a licensed aerial pesticide business to perform the application of pesticides by use of an aircraft, a person causing or arranging aerial pesticide spraying operations shall include a person performing billing and collection of payment for aerial spraying services performed,

employing or contracting with pilots to perform aerial applications, assigning aerial spraying work orders to pilots, or paying compensation to pilots for aerial spraying services performed whether or not such person is licensed as a commercial applicator.

(2) Sections 2-2655 to 2-2659 shall not apply to aerial spraying operations conducted by federal, state, or local government with public aircraft.

2-2656. Nebraska aerial pesticide business license; application; form; contents; fee; resident agent. (1) An application for an initial or renewal Nebraska aerial pesticide business license shall be submitted to the department prior to the commencement of aerial spraying operations, and an application for renewal of a Nebraska aerial pesticide business license shall be submitted to the department by January 1 of each year. The application shall be accompanied by an annual license fee of one hundred dollars. The license fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee, except that the fee shall not exceed one hundred fifty dollars. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund. The application shall be on a form prescribed by the department and shall include the following:

(a) The full name and permanent mailing address of the person applying for such license. If such applicant is an individual, the application shall include the applicant's personal mailing address and social security number. If such applicant is not an individual, the full name of each partner or member or the full name of the principal officers shall be given on the application;

(b) The location of the applicant's principal departure location and any additional departure locations utilized for aerial spraying operations to be conducted within Nebraska identified by one of the following: Global Positioning System coordinants, legal description, local address of the site, or airport identifier;

(c) A copy of the applicant's agricultural aircraft operator certificate issued pursuant to 14 C.F.R. part 137 or evidence the applicant holds such a certificate issued by the Federal Aviation Administration;

(d) The aircraft registration number issued by the Federal Aviation Administration pursuant to 14 C.F.R. part 47 of all aircraft owned, rented, or leased by the applicant to be utilized for aerial pesticide applications and all other aircraft utilized in aerial spraying operations conducted by the applicant;

(e) The Nebraska commercial applicator certificate number and current Federal Aviation Administration commercial pilot certificate number of all persons operating aircraft for the aerial application of pesticides during any aerial spraying operations conducted by the applicant; and

(f) Such other information as deemed necessary by the director to determine the suitability of the applicant for licensure as an aerial pesticide business.

(2) An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

2-2657. Nebraska aerial pesticide business license; reports and notice required.

Prior to commencing aerial spraying operations, a person holding a Nebraska aerial pesticide business license shall immediately report all aircraft, pilots, and departure locations utilized for the operation if different from or in addition to the information provided in the person's initial or renewal license application. If a pilot or aircraft is to be utilized for seasonal operations or on a temporary basis, the license holder shall notify the director of the approximate dates of commencement and termination of the utilization of supplemental pilots or aircraft.

2-2658. Nebraska aerial pesticide business license holder; responsibility; disciplinary actions; hearing.

Each Nebraska aerial pesticide business license holder is responsible for the acts of each person applying pesticides on lands within this state under the direction and supervision of the business. The aerial pesticide business's license is subject to denial, suspension, modification, or revocation after a hearing for any violation of the Pesticide Act, whether committed by the license holder, the license holder's agent, or the license holder's employee.

2-2659. Aerial pesticide business; records. Each aerial pesticide business shall maintain records of applications of pesticides by use of an aircraft that are required by the department, and the department may require such records to be kept separate from other business records. The department may adopt and promulgate rules and regulations regarding the information to be included in the records. The aerial pesticide business shall keep such records for a period of at least three years, provide the department with access to examine such records, and provide the department a copy of any such record upon request.

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