

**NOTICE OF RULEMAKING HEARING
STATE OF NEBRASKA
DEPARTMENT OF AGRICULTURE**

NOTICE IS HEREBY GIVEN that the Nebraska Department of Agriculture (NDA) will hold a rulemaking hearing on October 14, 2020, at 10:00 a.m. CT at NDA, Fourth Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509, for the proposed amendment of Nebraska Administrative Code, Title 25, Chapter 2 entitled Pesticide Regulations. The regulations are being amended to be consistent with the Pesticide Act as amended by LB 320 of 2019 and federal applicator certification regulations found at 40 CFR Part 171.

The hearing will be conducted under Neb. Rev. Stat. §84-907. COPIES OF THE PROPOSED REPEAL, AND INFORMATION PROVIDED TO THE GOVERNOR INCLUDING THE FISCAL IMPACT STATEMENT ARE AVAILABLE FOR PUBLIC EXAMINATION at NDA and at the Offices of the Secretary of State, State Capitol, Room 1305, Lincoln, Nebraska 68508 or website (www.sos.ne.gov/rules-and-regs/regtrack/index.cgi).

ALL INTERESTED PERSONS are invited to attend and testify at the hearing. Reasonable accommodations including the appointment of a licensed interpreter will be provided if requested with seven days notice to NDA at (402) 471-2341 (Voice) or the Nebraska Relay System at 711 or 800-833-7352 (TTY) to ask the operator to call NDA or email patricia.moock@nebraska.gov. Interested persons may submit written comments to NDA or e-mail comments to the Secretary of State's website. Comments will be made a part of the hearing record if received by October 13, 2020.

DATED at Lincoln, Nebraska, this 27th day of August, 2020.

NEBRASKA DEPARTMENT OF AGRICULTURE
Steve Wellman, Director

DRAFT FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Agriculture	
Title: 25	Prepared by: Bob Storant
Chapter: 2	Date prepared: August 20, 2020
Subject: Pesticide Regulations	Telephone: 471-2341

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decrease Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & a Description of Impact:

State Agency:

There would be minimal increased costs for the Department of Agriculture. The United States Environmental Protection Agency (EPA) has stated they will provide funds to cover the increase of costs for certifying and licensing pesticide applicators for the implementation of the revised certification program established by LB 320 of 2019.

Political Subdivision:

No changes due to these regulations.

Regulated Public:

There are no changes due to these regulations, however, changes to the certification program made by LB 320 of 2019 would require private applicators to obtain category certification if they wish to use certain types of restricted-use pesticides. The legislation also added recordkeeping requirements for noncertified applicators and their supervising commercial applicators. The amended regulations implement these changes that may increase some costs for the described applicators.

If indeterminable, explain why:

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 - DEPARTMENT OF AGRICULTURE

CHAPTER 2 - PESTICIDE REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in the administration of the Pesticide Act, Neb. Rev. Stat. §§2-2622 to 2-2659.

002 Administration. These regulations shall be administered by the Department of Agriculture located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2351. The fax number is (402) 471-6892.

003 Definitions. In addition to the terms listed below, the definition of terms found in the Pesticide Act shall apply to such terms when found in these regulations.

003.01 LEVEL OF VIOLATION shall mean means the alleged violation is a first or subsequent violation.

003.02 FIRST VIOLATION shall mean means a violation not meeting the definition of a subsequent violation. the alleged violator has not been found by an order of the director or any court, or by his or her own admission in a settlement agreement, to have committed a violation of the act in the three years immediately preceding the date of the alleged violation.

003.03 SUBSEQUENT VIOLATION shall mean means the alleged violator has been found by an order of the director or any court, or by his or her own admission in a settlement agreement, to have previously committed a violation of the act, one or more times or has not contested a violation listed in a settlement agreement or a warning letter, within the three years immediately preceding the date of committing the current alleged violation.

003.04 BASE FINE shall mean means the amount of the administrative fine set by regulation for a particular violation of the act prior to any adjustments for gravity or size of business.

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003.05 SETTLEMENT AGREEMENT shall mean means a written agreement between the department and an alleged violator resolving any matter before the department.

003.06 MINOR HARM shall mean means actual or potential harm which is or would be of short duration, has no lasting effects or permanent damage, or is easily reversible, and harm did not or would not result in significant monetary loss.

003.07 SERIOUS OR WIDESPREAD HARM shall mean means mean actual or potential harm to human health or to the environment which does not meet the parameters of minor harm.

003.08 LAWN CARE PESTICIDE shall mean any pesticide applied under the ornamental and turf pest control category.

003.09 USE shall mean the method by which a pesticide is mixed, diluted, loaded, applied or released and disposed. For the purposes of applicator certification, the term includes mixing and loading of pesticides, or cleaning residues from pesticide containers but excludes the physical transport of concentrate or diluted pesticides to the site of application.

003.10 FOREST shall mean an area of at least one-quarter acre of contiguous trees that are intentionally managed or maintained.

003.11 FEDERAL CERTIFICATION REGULATIONS means 40 CFR Part 171 as it existed on January 1, 2019 which is found in the July 1, 2018 Edition.

003.12 HANDLER means a person who mixes and loads restricted-use pesticides under the direct supervision of a certified applicator but does not apply such pesticides.

004 Federal Certification Regulations. The federal certification regulations are adopted and incorporated herein by reference so long as these standards do not conflict with the Pesticide Act. If there is an inconsistency between the act and the federal certification regulations, the act controls. A copy of the federal certification regulations is attached to these regulations on the department's website at <https://nda.nebraska.gov/regulations/plant/PesticideActCFR.pdf>.

004.01 Pesticide Registration Fees. There shall be paid to the department an annual fee of \$160 for each pesticide product to be registered in the state. Such fees shall be due January 1st of each year. If a person fails to apply for a renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to 25% of the fee due and owing per month, not to exceed 100% for each product to be renewed in addition to their renewal fees.

004.02 Dealer License Fee. All dealers shall pay to the department an annual license fee of \$25. Such license shall be required for each location where pesticides are distributed at retail or wholesale but should not include any location where pesticides are stored and later distributed to other locations owned by the same dealer. Those persons who distribute pesticides, including traditional or electronic brokerages or auctions, but do not have a permanent location shall also obtain a dealer license.

004.03 Commercial Applicator License Fees. Prior to being issued a commercial applicator license, applicators shall pay to the department a fee of \$90.

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~~004.03A~~ The fee for commercial applicators shall be paid prior to the expiration of the certification or re-certification. A commercial applicator license will not be issued until the license fee is paid.

~~004.03B~~ Reciprocal commercial applicator licenses shall expire on the expiration date of their license or certification from the issuing state or up to three years, whichever comes first.

~~004.03C~~ Failure to pay the commercial applicator license fee before the certification or recertification period expires shall result in an expired license, which can then only be renewed by testing.

~~004.04~~ Private Applicator License Fees. Prior to being issued a private applicator license, applicators shall pay to the department a fee of \$25.

~~004.04A~~ The fee for private applicators shall be paid prior to the expiration of the certification or re-certification. A private applicator license will not be issued until the license fee is paid.

~~004.04B~~ Failure to pay the private applicator license fee before the certification or recertification period expires shall result in an expired license, which can then only be renewed by testing or attending full applicator recertification training.

~~005~~ Standards for Pesticide Applicators. Any person making a pesticide application requiring certification pursuant to the Act, shall apply for and possess, either an original or reciprocal Nebraska Pesticide Applicator License. Applications shall be made on a form provided by the department. The license shall expire on April 15th of the third year after which it was issued.

~~005.01~~ General Standards for Certified Applicators. All certified applicators shall demonstrate Competency standards include demonstration of practical knowledge of the principles and practices of pest control and proper and effective application of pesticides as set forth in applicable federal certification regulations. Federal certification regulations require all certified applicators demonstrate the ability to read and understand pesticide labeling. Private applicators not taking a certification examination may demonstrate their ability to read and understand a label by completing a label exercise during certification training. Those applicators using restricted-use pesticides through an irrigation system additionally need to comply with licensing requirements of the Nebraska Chemigation Act, Neb. Rev. Stat. §§46-1101 through 46-1148, and safety in use of pesticides. Determination of competency shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's licensure and knowledge of the following areas:

~~005.01A~~ Label and Labeling Comprehension:

~~005.01A(1)~~ The general format and terminology of pesticide labels and labeling;

~~005.01A(2)~~ The understanding of instructions, directions for use, warnings, terms, names, symbols, and other information commonly appearing on pesticide labels;

~~005.01A(3)~~ Classification of pesticides and meaning of the terms, "general and restricted-use pesticide"; and

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~~005.01A(4) Necessity for use consistent with the label. Labels and labeling are legal documents and the directions they contain shall be followed.~~

~~005.01B Safety. Factors including:~~

~~005.01B(1) Understanding the terms acute and chronic pesticide toxicity, common exposure routes and how such hazard is determined by pesticide toxicity and exposure;~~

~~005.01B(2) Common types and causes of pesticide accidents;~~

~~005.01B(3) Precautions necessary to prevent injury to applicators and other individuals in or near treated areas;~~

~~005.01B(4) Recognition of symptoms of acute pesticide toxicity and practical treatment;~~

~~005.01B(5) First aid and other procedures to be followed in case of a pesticide accident;~~

~~005.01B(6) Worker protection, including warnings and re-entry restrictions; and~~

~~005.01B(7) Proper identification, storage, transport, handling, mixing, and application procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers, and the need for and use of personal protective clothing and equipment.~~

~~005.01C Environmental Risk. The potential environmental consequences of the use and misuse of pesticides that may cause drift and runoff, precautions for protection of endangered and threatened species, and methods of spill prevention and control. Such consequences may be influenced by such factors as:~~

~~005.01C(1) Weather and other climatic factors that contribute to pesticide drift and run off;~~

~~005.01C(2) How terrain, soil and other substrata influence surface and ground water contamination;~~

~~005.01C(3) Recognition of sensitive areas, fish, wildlife and other nontarget organisms affected by pesticide applications, drift and runoff;~~

~~005.01C(4) Drainage patterns; and~~

~~005.01C(5) Knowledge of management practices and their application to prevent pesticides from reaching ground water and surface water.~~

~~005.01D Pest Identification and Biology. Factors such as:~~

~~005.01D(1) Understanding what a pest is, and why integrated pest management (IPM) is critical in determining when and how pesticides control pests. Common features of pest organisms and recognition of characteristics of damage or problems caused by pests and needed for pest recognition;~~

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~~005.01D(2) Principles of pest identification and recognition of relevant pests; and~~

~~005.01D(3) Pest development and biology as it may be relevant to problem identification and control.~~

~~005.01E Pesticides and chemical control. Factors such as:~~

~~005.01E(1) Types of pesticides;~~

~~005.01E(2) Types of formulations and adjuvants;~~

~~005.01E(3) Concepts of pesticide compatibility, synergism, persistence, toxicity of the formulations, and animal and plant resistance;~~

~~005.01E(4) Hazards and residues associated with use;~~

~~005.01E(5) Factors which affect a pesticide's effectiveness or lead to such problems as resistance to pesticides;~~

~~005.01E(6) Selection of correct formulation and method of application for a use site, pest, and pesticide; and~~

~~005.01E(7) Dilution procedures.~~

~~005.01F Equipment. Factors including:~~

~~005.01F(1) Characteristics and main uses of typical pesticide application equipment and advantages and limitations of each type, including selection of the most appropriate equipment for applicable situations; and~~

~~005.01F(2) Proper use, care and maintenance, and calibration of application equipment.~~

~~005.01G Application techniques. Factors including:~~

~~005.01G(1) Methods used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;~~

~~005.01G(2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and~~

~~005.01G(3) Prevention of drift and pesticide loss into the environment, including the concept of vapor drift of volatile pesticide formulations.~~

~~005.01H Calibration and calculation.~~

~~005.01H(1) Dilution of concentrate formulations in accordance with label directions.~~

~~005.01H(2) Calculation of area or volume to be treated and amount of pesticide to be applied; and~~

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~~005.01H(3) Adjustment of application equipment's nozzle, pressure, and speed to obtain correct pesticide output.~~

~~005.01I Applicator related laws and regulations.~~

~~005.01I(1) Applicable federal and state laws and regulations.~~

~~005.01I(2) Applicator responsibility for pesticide use consistent with its label or labeling and supervision of noncertified employees assigned to use a restricted-use pesticide.~~

~~005.01I(3) Applicator liability and penalties.~~

~~005.01J Other. Worker protection standards, endangered species protection requirements, and ground water protection.~~

005.02 Commercial and Noncommercial Applicators.

005.02A Categories and Subcategories. ~~Commercial~~ Except for the sodium fluoroacetate predator control category, commercial and noncommercial applicators may elect to be trained, examined and certified according to the categories set out in the federal certification regulations and the following categories and subcategories:

~~005.02A(1) Agricultural pest control – plant. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides in production of agricultural crops, including, but not limited to feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural land that are used to produce hay or to graze animals.~~

~~005.02A(1)(a) Fumigation of soil. This subcategory includes commercial and noncommercial applicators using or supervising the application of restricted-use pesticides for soil fumigation in production of an agricultural commodity. Any individual certified in this category is required to be certified in 005.02A(1) agricultural pest control-plant.~~

~~005.02A(2) Agricultural pest control – animal. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides on animals including, but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and other livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying restricted-use pesticides are included in this category.~~

~~005.02A(3) Forest pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides in forests, forest nurseries, and forest seed-producing areas.~~

~~005.02A(4) Ornamental and turf pest control. This category includes commercial applicators using or supervising the use of restricted-use or general pesticides and noncommercial applicators using or supervising the use of restricted-use pesticides to control pests in all lawn care applications, including the maintenance and production of ornamental trees, shrubs, flowers, and turf, including in and around structures, green houses, plant nurseries, cemeteries, golf courses, athletic fields, public or private grounds and turf farms.~~

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~~005.02A(5) Aquatic pest control. This category includes commercial and noncommercial applicators using or supervising the use of a restricted-use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in 005.02A(9) below.~~

~~005.02A(1) 005.02A(5)(a) Sewer Use of Metam Sodium. This subcategory includes commercial and noncommercial applicators using, or supervising the use of, For applications of metam sodium in sewer lines for plant root control. An applicator may choose to be certified in this subcategory alone or together with any other category.~~

~~005.02A(6) Seed treatment. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides on seeds.~~

~~005.02A(7) Right-of-way pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides in the maintenance of public roads, electric power lines, pipelines, irrigation canals or ditches, railway rights-of-way, fencelines, parking areas, utility lots, structural perimeters, and other similar areas.~~

~~005.02A(8) Structural and health related pest control. This category includes commercial applicators using or supervising the use of restricted-use or general pesticides and noncommercial applicators using or supervising the use of restricted-use pesticides in, on, or around human dwellings, institutions, such as food handling, preparation, manufacturing, processing, packaging and dining facilities, schools and hospitals, industrial establishments, including warehouses, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. This category includes commercial and noncommercial applicators using restricted-use pesticides to control insects, pest birds, and vertebrate pests. Any person who applies structural pest control pesticides to the land of another for hire or compensation shall be licensed in this category regardless of whether such person applies any restricted-use pesticides.~~

~~005.02A(2) 005.02A(8)(a) Wood Destroying Organisms. This subcategory includes commercial or noncommercial applicators using or supervising the use For applications of restricted-use or general-use pesticides which are not fumigants in or around structures for the control of wood destroying organisms such as termites, carpenter ants, fungus or beetle species. Any person who applies structural pest control pesticides to control wood destroying organisms to the land of another for hire or compensation shall be licensed in this subcategory regardless of whether such person applies general-use or restricted-use pesticides. An individual may choose to be certified in this subcategory alone or together with any other category.~~

~~005.02A(9) Public health pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides; for hire or compensation or for state, federal or other governmental units in public health programs for the management and control of pests, such as mosquito and other insect or vertebrate disease vectors, having medical and public health importance, and which are made on a wide-area basis beyond the control of an individual property; This category also includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides in cooling water systems used to transfer or dissipate heat. This category also includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides to disinfect or sterilize~~

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medical/veterinary equipment, food/beverage/drug processing equipment, and the environmental surfaces of such places as hospitals/nursing homes, food processing areas, and plant and animal breeding facilities.

~~005.02A(3) 005.02A(10)~~ Wood preservation. This category includes commercial and noncommercial applicators using or supervising the use For applications of any restricted-use pesticide for preservative treatment of wood or wood products by pressure or nonpressure methods to protect wood that will be exposed to weather, including ground line pole treatment, waterproofing millwork, cutoffs, or supplemental field treatment.

~~005.02A(11)~~ Structural Fumigation. This category includes commercial and noncommercial applicators who use or supervise the use of restricted-use pesticides, in gaseous or solid form, within structures and other enclosed gas tight spaces such as tents, vaults, stacks, vehicles, or vessels for a wide variety of conditions and commodities, including raw agricultural products. This category does not include the use of gaseous or solid fumigants for the control of vertebrate pest species in burrows or open areas.

~~005.02A(12)~~ Aerial pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides applied by fixed or rotary wing aircraft for use in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, fencelines, structural perimeters, other similar areas, and in the production of agricultural crops, including, but not limited to feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; grasslands, and non-crop agricultural land.

~~005.02A(4) 005.02A(13)~~ Wildlife Damage Control. This category includes commercial and noncommercial applicators who use, or supervise the use For applications of, restricted-use or general-use pesticides, including other than gaseous or solid fumigants, in the management of vertebrate wildlife to control the damage that they cause. This category would include persons attempting to manage pests such as coyotes, prairie dogs, moles, ground squirrels, pocket gophers, rabbits, muskrat, deer, or birds in situations where the animals are not invading residential or industrial structures.

~~005.02A(14)~~ Subcategories for Regulatory Work, Demonstration or Research. The following subcategories may only be issued in conjunction with at least one other category:

~~005.02A(14)(a)~~ Demonstration/Research Subcategory. This subcategory includes commercial and noncommercial applicators who create research plots or demonstrate to the public the proper use and techniques of applying restricted-use pesticides or supervising such demonstrations. Examples are such persons as university researchers or extension specialists, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. Also included in this subcategory are commercial applicators conducting field research who use, or supervise the use of, restricted-use pesticides.

~~005.02A(14)(b)~~ Regulatory. This subcategory includes commercial and noncommercial applicators using, or supervising the use of, restricted-use pesticides for federal, state, or other governmental units in the control of regulated pests. Examples are such persons as federal

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~~quarantine or predatory pest control officials using restricted-use pesticides to control an outbreak of a regulated pest.~~

~~005.02B Specific Standards of Competency. Commercial and noncommercial applicators shall be required to satisfactorily demonstrate Competency standards for commercial and noncommercial applicators include a demonstration of competence in the use application and handling of pesticides specific to their certification as such pesticides may be used in Nebraska. Subject demonstration shall be on the basis of a written examination, and as appropriate, performance testing, as a prerequisite prior to initial certification. A commercial or noncommercial applicator shall not be required to satisfactorily complete training as a prerequisite to examination for licensing. Standards for determination of competency in each category are as set forth below by the federal certification regulations and as follows, and those which may be approved by the director. Such examination and testing shall include the general standards applicable to all certified applicators and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. The specific standards of competency in paragraphs 005.02B(1) through 005.02B(13) below do not apply to persons conducting laboratory type research involving restricted-use pesticides.~~

~~005.02B(1) Agricultural pest control—plant. Applicators shall demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted-use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted-use pesticides in agricultural areas. Those applicators using their restricted-use pesticides through an irrigation system must also be licensed according to the Nebraska Chemigation Act, Neb. Rev. Stat. §§46-1101 through 46-1148.~~

~~005.02B(1)(a) Fumigation of soil. Applicators shall demonstrate practical knowledge of the use of personal protective equipment for fumigation, general safety procedures, including worker training, notification, fumigation management plan development, site posting, air monitoring, re-entry and aeration. Further they shall demonstrate knowledge of emergency procedures and application techniques appropriate to various situations.~~

~~005.02B(2) Agricultural pest control—animal. Applicators applying pesticides directly to animals shall demonstrate practical knowledge of such animals as may be treated and their associated pests, specific pesticide toxicity and residue potential since host animals will frequently be used for food, and the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.~~

~~005.02B(3) Forest pest control. Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, seed production, and types of pests involved; the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications; the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility~~

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of secondary problems such as unintended effects on wildlife, and proper use of specialized equipment, especially as it may relate to meteorological factors and adjacent land use.

~~005.02B(4)~~ Ornamental and turf pest control. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of lawns and turf grass, ornamental trees, shrubs, plantings, and flowers used in and around structures, green houses, and plant nurseries. They shall demonstrate knowledge of pesticide problems, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control; and application methods which will minimize or prevent hazards to humans, pets and other domestic animals, and wildlife. Because of human proximity to application sites, applicators shall demonstrate practical knowledge of methods and measures used to protect applicators, residents, occupants, workers, pets and other animals. Applicators shall demonstrate practical knowledge of pesticide application methods used in turf management and production and the risks associated with pesticide drift and runoff. Because of the persistence of turf pesticides, applicators shall demonstrate a practical knowledge of measures used to protect humans, pets, and other domestic or wild animals that may contact treated turf.

~~005.02B(5)~~ Aquatic pest control. Applicators in this category shall demonstrate practical knowledge of: the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted-use pesticides used in this category; various water use situations and the potential for downstream effects; potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments; and the principles of limited-area application.

~~005.02B(1)~~ ~~005.02B(5)(a)~~ Sewer Use of Metam Sodium. Applicators in this subcategory shall demonstrate Competency standards include demonstration of practical knowledge of the secondary effects of metam sodium on downstream water bodies (streams, rivers, ponds, and groundwater) and lateral and upstream residential and nonresidential sewer connections; the importance and use of personal protective equipment; and the proper measurement, calibration, and application of metam sodium.

~~005.02B(6)~~ Seed treatment. Applicators shall demonstrate practical knowledge of the types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination; the hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, the generation of dust lubricants capable of causing pesticide exposure to pollinating insects, as well as proper disposal of unused treated seed.

~~005.02B(7)~~ Right-of-way pest control. Applicators shall demonstrate practical knowledge of the wide variety of environments and terrain that rights-of-way can traverse, including waterways; problems concerning runoff, drift, and excessive foliage destruction; the ability to recognize target organisms; the mode of action of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of pesticide application activities in areas adjacent to target sites and communities.

~~005.02B(8)~~ Structural/health-related pest control. Applicators shall demonstrate a practical knowledge of the control of pests in and around structures. The applicator shall demonstrate

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~~practical knowledge of household type pests such as cockroaches, ants, silverfish, spiders, food and fabric pests, mice, rats, bats, and other occasional invaders that infest structures, stored products, and food preparation or processing areas such as kitchens, cafeterias, or snack bars; the conditions conducive to pest infestations and selection of appropriate control procedures for each situation. Applicators shall demonstrate knowledge of risks associated with pesticide usage in occupied structures and near food products. Since exposure to humans, including babies, children, pregnant women and elderly people is a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition including continuous exposure in the various situations encountered in this category.~~

~~005.02B(8)(a) Health related pest control. Insects and other pests that create health issues for humans and pets such as vector diseases, bed bugs and fleas may involve outdoor applications for those pests on individual property. Applicators must demonstrate practical knowledge of environmental conditions particularly related to this activity, since outdoor applications can carry off-site by drift or runoff. Applicators shall demonstrate knowledge of the risks involved with handling and use of pesticides used indoors and in conjunction with structural pest control, and the appropriate application equipment to be used.~~

~~005.02B(8)(b) Bird control. Applicators shall demonstrate practical knowledge of protected and unprotected pests, birds, and conditions conducive to bird problems; applicable laws and regulations protecting birds and the actions required in order to control protected pest species; and bird control methods and the hazards associated with secondary poisoning of nontarget organisms.~~

~~005.02B(8)(c) Control of mice, rats and other vertebrate pests (not including birds) which are invading structures. Applicators shall demonstrate practical knowledge of vertebrate pest animals, other than birds, and the conditions conducive to infestation and damage by such vertebrate animals; all applicable laws and regulations governing the control and protection of such animals; the actions required to control protected or endangered animals; methods of control of pest animals; and the effects of such control on nontarget organisms and other potential effects on the environment.~~

~~005.02B(2) 005.02B(8)(d) Wood Destroying Organisms (excluding structural fumigation). Applicators shall demonstrate Competency standards include demonstration of practical knowledge of structural wood destroying organisms, such as beetles, termites, carpenter ants, and fungi, conditions conducive to infestation, the ability to select, calibrate, and use appropriate application equipment, and procedures including rodding and trenching, topical application of pesticides, and local injection of specially labeled wood treatments in infested wood, such as dimension lumber, pilings, and other structural wood. The applicator shall demonstrate knowledge of new control technology, such as baits and insect growth regulators. Applicators shall demonstrate knowledge of environmental and health hazards associated with the use application of pesticides used for wood destroying pest control pesticides. Applicators shall demonstrate knowledge of the risks involved with handling and use of these pesticides and the appropriate measures to be taken to reduce exposure to humans and pets pests residing in the infested structure.~~

~~005.02B(9) Public health pest control. Applicators shall demonstrate practical knowledge of vector disease transmission as it relates to and influences application programs; recognition of~~

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the wide variety of pests involved, an understanding of appropriate vector life cycles and habitats as a basis for control strategy; the great variety of environments ranging from streams to those conditions found in buildings; and the importance and employment of such nonchemical control methods as sanitation, waste disposal, exclusion, and drainage. Applicators shall also be aware of all regulatory requirements for re-entry precautions and warnings. Pest control in cooling water systems. Applicators shall demonstrate practical knowledge of the different cooling water systems used to transfer and dissipate heat. They shall demonstrate expertise in identifying and analyzing microbial problems and in selecting the appropriate anti-microbial agents in discharging systems to maintain the micro-organisms at tolerable levels. Applicators shall demonstrate practical knowledge of the different micro-organisms that contaminate equipment in different environmental sites, such as medical, dental, educational, institutional, and food processing facilities; the different chemicals used as gases to sterilize equipment with specific chambers or as room disinfectants in enclosed spaces, and the possible hazards associated with the use of such gases; and the different chemical agents used as cleaning and anti-microbial agents to disinfect specific areas within a structure.

005.02B(3) 005.02B(10) Wood preservation. Applicators in this category shall demonstrate Competency standards include demonstration of practical knowledge of: conditions for which a wood preservative is used; all applicable treating and testing equipment; methods of applying wood preservatives and factors influencing their effectiveness; potential hazards to human health and the environment, including safety procedures and equipment to minimize exposure and first aid in the event of accidents; waste disposal as well as proper handling of spills, and the need for informing purchasers of treated wood products of the precautions they should take for handling, use, and disposal of treated wood products.

005.02B(11) Structural Fumigation. Applicators shall demonstrate practical knowledge of: conditions requiring the application of gaseous or solid fumigants and selection of the most appropriate fumigation methods to use; fumigation equipment used, including application, monitoring, testing, calculating, and personal protective equipment; and the risks involved with the use of fumigants. Applicators shall demonstrate ability to release, distribute, and maintain the correct fumigant concentrations for the products/structure being fumigated under varying conditions, and to completely aerate the fumigant. Applicators shall demonstrate knowledge of the fumigant management plan concept and why it is important to review and revise plans before every new fumigation.

005.02B(12) Aerial pest control. Applicators shall demonstrate practical knowledge of equipment calibration and maintenance, and the avoidance of problems associated with aerial application such as drift and nontarget injury. Applicators shall demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted-use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted-use pesticides in agricultural areas. Applicators shall also demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways; problems concerning runoff, drift, and excessive foliage destruction; the ability to recognize target organisms; an understanding of the mode of action of herbicides and the need for

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~~containment of these pesticides within the target area, and the impact of their application activities in adjacent areas and communities.~~

~~005.02B(4) 005.02B(13) Wildlife Damage Control. Applicators shall demonstrate Competency standards include demonstration of practical knowledge of protected and unprotected vertebrate pests; applicable laws and regulations protecting pests and vertebrates; methods of control of pest animals; and the potential effects of such control on humans, non-target organisms, and the environment. Applicators shall demonstrate a knowledge of the various methods of monitoring target sites for non-target animals, creating and following transect monitoring protocols and alerting the proper authorities when non-target animals are impacted by the control program.~~

~~005.02B(14) Subcategories for Demonstration/Research and Regulatory Work.~~

~~005.02B(14)(a) Demonstration/Research. Persons researching and demonstrating the safe and effective use of pesticides to other applicators and the public shall be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration and practical knowledge of problems, pests, and population levels appearing in each demonstration situation is required. Further, the applicator shall demonstrate an understanding of pesticide/organism interactions and the importance of integrating pesticide use with other control methods. The applicator doing demonstration pest control work or conducting field research or method development work with restricted-use pesticides shall possess knowledge of all of the general standards detailed earlier in subsection 005.01. In addition, they shall meet the specific standards of competency required for the particular category of work they are undertaking.~~

~~005.02B(14)(b) Regulatory Work. Applicators shall demonstrate practical knowledge of regulated pests, including applicable laws relating to the quarantine and other regulation of pests and the potential impact on the environment of restricted-use pesticides used in suppression and eradication programs. The applicator shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. The applicator's knowledge shall extend beyond that required by their immediate duty since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgment shall be made in new situations.~~

005.02C Continuing education units (CEUs) may be used as a method of recertification for commercial and noncommercial applicators. Partial CEU credit may be provided by the department to applicators for those approved educational programs that satisfy a portion of the required recertification topics when such education programs are received prior to the expiration of the certified applicators' license. CEUs may be available for recertification on programs offered or sponsored by the University, trade organizations, associations, and commercial enterprises. All CEU programs must be approved in advance by the department and are subject to the availability of resources the department has to monitor such programs. CEU providers will submit to the department, sixty days prior to the CEU event, a detailed agenda, list and qualifications of speakers, and related certification categories.

~~005.03 Private Applicators. Individuals using and/or supervising the use of restricted-use pesticides in the production of agricultural commodities on their own property, property~~

~~under their control, or property owned or under the control of their employer are included in this group. This type of applicator license also includes individuals using or supervising the use of restricted-use pesticides on animals and the use of restricted-use pesticides for soil or grain fumigation in the production or storage of an agricultural commodity they have produced, and the use of gaseous or solid fumigants or other poisons for the control of vertebrate pests infesting rangeland or pastures owned by them or under their control. These private applicators using a restricted-use pesticide through an irrigation system must also be licensed according to the Nebraska Chemigation Act, Neb. Rev. Stat. §§46-1101 through 46-1148. Private applicators who intend to apply applying restricted-use pesticides by fixed or rotary wing aircraft in the production of or in support of the production of agricultural commodities shall be required to will meet the same standards of competency and be licensed as a commercial or noncommercial applicator in order to be certified. Such applicator shall demonstrate practical knowledge of equipment calibration and maintenance, preharvest intervals, re-entry intervals, phytotoxicity, prevention of drift, and potential for environmental contamination and nontarget injury.~~

005.03A Categories for Private Applicators. Except for the sodium cyanide predator control and sodium fluoroacetate predator control categories, private applicators may elect to be trained and certified according to the categories set out in the federal certification regulations. There are no separate categories or subcategories for private applicators, other than that for aerial pesticide application, in which case the department shall issue a private applicator license with that category listed, once the applicator has demonstrated competency as identified in 25 NAC 2-005.03.

005.03B Standards of Competency. Competency standards for private applicators include a demonstration of competence in the application and handling of pesticides specific to their certification. Standards for determination of competency in each category are as set by the federal certification regulations. As a minimum requirement for licensure, a private applicator must possess a practical knowledge of the pest problems and pest control practices associated with that person's agricultural operations; proper storage, use, handling and disposal of pesticides and containers; and related legal responsibilities. This practical knowledge includes the ability to:

005.03B(1) Recognize common pests to be controlled and damage caused by them.

005.03B(2) Read and understand the label and labeling information including the common name of pesticides applied; pest(s) to be controlled, timing and methods of application; safety precautions; pre-harvest and restricted entry intervals; and any specific disposal procedures.

005.03B(3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

005.03B(4) Recognize local environmental situations that must be considered during application to avoid off-site movement of the pesticide by runoff or drift or contamination of non-target sites.

005.03B(5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

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~~005.03B(6) Understand and comply with rules and regulations relating to worker protection standards, the endangered species protection program, and ground and surface water protection.~~

~~005.03B(7) The applicator shall demonstrate practical knowledge of the use of personal protective clothing and equipment for fumigation, creating and following a fumigation management plan, general safety procedures, including posting and re-entry, and aeration. Further, they shall demonstrate knowledge of emergency procedures and the various application and emergency response techniques appropriate to various situations.~~

~~005.04 Noncertified Applicators and Handlers. The minimum standard for noncertified applicators and their supervising certified applicators is that they meet the requirements set forth in §2-2642 and §2-2643 of the Act including all applicable requirements of the federal certification regulations. The minimum standard for handlers and their supervising certified applicators is that they meet all applicable requirements of the federal certification regulations. Any individual required to be a licensed certified applicator may use pesticides as a noncertified applicator for only one consecutive 60-day period of time if the noncertified applicator is under the supervision of a licensed certified applicator pursuant to the requirements of the Act applies to the department within ten days of making the first pesticide use for which a license is required, is provided training by the certified licensed supervisor, is provided with the labels for all pesticides used, and is in voice or electronic communications such that the certified licensed applicator can be physically on-site should the need arise within a reasonable period of time.~~

~~005.04A The verifiable, detailed guidance on how to use pesticides provided by the supervising licensed certified applicator shall include a written outline of training or set of instructions that adequately informs the noncertified applicator about the basic responsibilities of his or her duties, so the noncertified applicator is confident in safely applying pesticides. Training shall include, but need not be limited to:~~

~~005.04A(1) Equipment calibration and operation;~~

~~005.04A(2) Personal protective equipment; and~~

~~005.04A(3) Directions for use specified on the product label.~~

~~005.04B The supervising licensed certified applicator shall provide the noncertified applicator with a copy of the labels of all pesticide products to be used. The supervising applicator shall also determine the level of experience and knowledge of the noncertified applicator, provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision, and accompany the noncertified applicator to at least one site which would be typical for each type of pesticide use that the noncertified applicator performs.~~

~~005.04C The noncertified applicator shall sign the outline or training attachment acknowledging receipt and understanding of such guidance.~~

~~005.04A-005.04D The Adequate supervision by voice or electronic method means that the supervising licensed certified applicator shall be accessible by can be includes any form of communication in standard use that can adequately summon the supervising~~

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licensed certified applicator to the site of application and provide for a two-way conversation. ~~Examples of adequate forms of electronic means shall include telephone, two-way radio and instant electronic messaging, but does not include answering machines, fax machines or pagers.~~

~~005.04B~~ ~~005.04E~~ The reasonable period of time that it would take the supervising licensed certified applicator to be physically at the application site shall be is three hours, starting at the time the supervising applicator is contacted by the noncertified applicator and ending when the supervising applicator arrived ~~arrives~~ on the site of the noncertified applicator's pesticide use.

005.05 Training, Testing and Application Requirements.

~~005.05A~~ Application for License. Any person applying for a Nebraska Pesticide Applicator License must do so by submitting required information on a form provided by the department. Such information may include the applicant's name, address, telephone number, date of birth, type of license and category for which the application is being submitted. ~~No license may be issued unless the department receives the required information. No license will be issued until the applicant has paid the required license processing fee prescribed in 25 NAC 2-004. Under an executive order issued by the Governor of Nebraska, the department has been directed to offer military personnel who were serving active duty during the period of time they would have otherwise renewed their applicator certification, a one-year extension on the license. The department requires credible evidence from the applicant to verify their military active duty status.~~

~~005.05B~~ License Renewal Requirements. Any person possessing a current Nebraska pesticide applicator license can renew the license prior to the expiration date by attending a training session approved by the department, or by passing the examinations required for the type of license and categories covered by the license. Any person possessing an expired license may only renew the license by taking the necessary examinations for the license, or in the case of a private applicator license, attending a training session approved by the department or completing one of the training programs offered by the University of Nebraska Pesticide Safety Education Program. ~~Because testing is always an option, attending training to obtain or renew an applicator license is not mandatory. Any person attending recertification training will be required to attend the entire training program, and if a department proctor determines the applicant is spending too much time outside of the meeting, the department proctor is authorized to dismiss the person from the training session.~~

~~005.05C~~ License Testing Requirements. Nebraska pesticide applicator licenses are renewed every three years, therefore it is imperative that applicants fully comprehend and retain the required information leading to their competency. ~~For this reason, all~~ All electronic communication devices are to be turned off during the training and/or testing session. Personal calculators are allowed in testing sessions so long as they are not also able to communicate with other devices outside of the testing session. Persons attending training or testing will be allowed to use electronic communication devices during breaks, ~~but must~~ if they turn off the device upon re-entering the training or testing room.

005.05D Cheating. Any person determined or suspected of cheating by the department's proctor while taking an examination will be asked to terminate the test session and return at a later date to retake the examination. Repeat offenses may result in the department barring the applicant from future examinations, thus preventing the applicant from obtaining a license. Cheating on an examination includes shall include, but is not limited to: using electronic devices to communicate with other individuals or devices, using study materials during the examination, communicating with other testers in the test session by any means, exchanging examination booklets with other testers, using a copied or stolen examination booklet before or during the examination, photocopying, photographing, or otherwise duplicating the test booklet in whole or in part, or using any other method intended to defeat the purpose of testing the personal knowledge and competence of the applicant to apply pesticides. Any discovery by the department that applicants for a pesticide applicator license are using or have used electronic devices (other than calculators) to aid in completing the examinations will be required to surrender such device to the department proctor, and could potentially be dismissed from the testing session. The department proctor will return such device to the applicant upon completion of the examination.

006 Record Keeping.

006.01 Private applicators shall record Sufficient record keeping for private applicators includes all of the following information on the application of all restricted-use pesticides, complete the record within 14 days of the application, and maintain the record for a period of three years from the date of the application:

006.01A The brand or product name and the EPA registration number of the pesticide that was applied;

006.01B The total amount of the pesticide applied;

006.01C The location of the application, the size of area treated, and the crop, commodity, stored product, or site to which a pesticide was applied. A separate record of application is required to be made for each unique location. The location of the application may be recorded using any of the following designations:

006.01C(1) County, range, township, and section;

006.01C(2) An identification system utilizing maps ~~and/or~~ written descriptions which accurately identifies location, such as global positioning system locators;

006.01C(3) An identification system established by a USDA agency which utilizes maps and a numbering system to identify field locations; or

006.01C(4) The legal property description.

006.01D The month, day, and year on which the pesticide application occurred. A separate record of application is necessary for each unique date of application. If an application is suspended for any reason, the proper procedure is that a separate application record is made for each day of application with the specific area treated for each separate date clearly recorded. For applications made over multiple days, the

record lists all days during which the application was in effect, from the introduction of the pesticide until the target site was cleared for re-entry;

006.01E The name and certification number of the certified applicator who applied or who supervised the person making the application; and

006.01F Applications of pesticides made on the same day in a total area of less than 1/10 of an acre are classified as spot applications and require the following elements be recorded:

006.01F(1) Brand or product name and EPA registration number;

006.01F(2) Total amount applied;

006.01F(3) Location ~~must be~~ designated as "spot application" with an indication of the section, township, range and county of the target site; and

006.01F(4) The date of application.

~~006.02 Commercial and noncommercial applicators shall record~~ Sufficient record keeping for commercial and noncommercial applicators includes all of the following information on the application of restricted-use pesticides within 48 hours of the application and keeping the records for a minimum of three years following the date of the application at their principal place of business. ~~For commercial~~ Commercial applicators applying structural pest control pesticides shall also record sufficient record keeping includes the following information on all general use pesticide applications made for those purposes. Additionally, it is recommended that commercial applicators applying general use pesticides for lawn-care purposes shall also keep such records. ~~All such information shall be recorded within 48 hours of the pesticide application and be kept for a minimum of three years following the date of application.~~ Each commercial applicator, noncommercial applicator, or each firm employing a commercial or noncommercial applicator shall keep and maintain at their principal place of business true and accurate information as outlined below. Such records shall ~~are to be~~ provided to the customer or person contracting for the application, on their request, within four business days of the request.

006.02A Name and address of the person for whom the pesticide was applied.

006.02B Name, address, and certified applicator license number of person making the application. ~~When~~ Where a noncertified applicator makes the application, include both the noncertified and supervising licensed applicator information.

006.02C Location ~~or address~~ of the pesticide application. A separate record of application is required to be made for each unique location. The location of the application may be recorded using any of the following designations:

006.02C(1) County, range, township, and section;

006.02C(2) An identification system utilizing maps or written descriptions which accurately identifies location, such as global positioning system locators;

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006.02C(3) An identification system established by a USDA agency which utilizes maps and a numbering system to identify field locations; or

006.02C(4) The legal property description.

~~006.02D Target pest(s) i.e., specific common name of insect, weed, or disease. Broad general names of pests such as "grass", "weeds" or "insects" are not acceptable.~~

~~006.02D-006.02E Site, crop, commodity or stored product of application i.e., specific crop or commodity, type of field, type of surface, etc.~~

~~006.02E 006.02F Day, month, and year of application. A separate record of application is necessary for each unique date of application. If an application is suspended for any reason, the proper procedure is that a separate application record is made for each day of application with the specific area treated for each separate date clearly recorded. For applications made over multiple days, the record lists all days during which the application was in effect, from the introduction of the pesticide until the target site was cleared for re-entry.~~

~~006.02F 006.02G Initial starting time of application.~~

~~006.02G 006.02H Trade Product name and EPA registration number of the pesticide applied.~~

~~006.02I Rate of pesticide applied per unit of measure, i.e., pounds per acre, ounces per 1,000 square feet, etc. For spot treatment, indicate mixture rates of the applied concentration such as one ounce per gallon.~~

~~006.02H 006.02J Total amount of pesticide applied to site per application.~~

~~006.02I 006.02K Size of treated area treated or site, i.e., acres, cubic feet, square feet, linear feet, crack and crevice, trap or bait placement, or spot treatment.~~

~~006.02L Method of disposal of unused pesticide. If no unused pesticide remained, records should indicate such.~~

~~006.02M It is recommended that records be kept of estimated wind direction and velocity at the time of application. Where wind direction and velocity change during the course of application, average wind speed and general direction may be used.~~

~~006.02N It is recommended that records be kept of estimated ambient temperature at time of application. The temperature may be taken at the start of the application. In cases of long term applications, average temperature or periodic temperature may be used. Temperature should be taken of the most appropriate substrate affecting the pesticide application. For aerial or ground/surface applications, air temperature should be recorded. For aquatic applications, water temperature should be recorded. For soil or grain fumigation, soil or grain temperature should be recorded.~~

006.03 Dealers. Each Record keeping for each person who distributes restricted-use pesticides in the state shall is sufficient if it is completed within two working days of the

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~~transaction, keep~~ is a record of each transaction involving a restricted-use pesticide, is kept for a period of 36 months from the date of the transaction. ~~Such records shall be completed within two working days of the transaction and~~ includes ~~include~~ the following information:

006.03A The name and address (residence or principal place of business) of the person to whom the restricted-use pesticide is made available. No dealer may make a restricted-use pesticide available to an uncertified person unless he or she can document that the distribution is to a licensed dealer or the restricted-use pesticide will be used applied by a certified applicator with a current and correct category license for the pesticide. Such documentation includes ~~shall include~~ all information required in subsections (B) and (C) below.

006.03B The name and address (residence or principal place of business) of the certified applicator or dealer who will use apply the restricted-use pesticide if different from paragraph 006.03A above;

006.03C ~~The certified applicators'~~ license number of a certified applicator or dealer ~~license number~~, the state or other governmental entity that issued the certification document, the expiration date of the certification or license and the categories in which the applicator is certified if appropriate;

006.03D The product name, EPA registration number, and the special local need registration number, if any, on the label of the pesticide;

006.03E The quantity of the pesticide ~~made available for use~~ involved in the transaction; and

006.03F The date of the transaction; ~~and~~

~~006.03G~~ ~~The written agreement between the licensed certified applicator and the uncertified person delivering the restricted-use pesticide to the certified applicator, as specified in §2-2635(3)(e) of the Pesticide Act.~~

007 Fines and Penalties. The department case review process will determine the appropriate fine or penalty for each violation of the Pesticide Act in accordance with §2-2626(9), §2-2650 and any other applicable provisions of the act.

007.01 When it is determined that an administrative fine is an appropriate penalty for a violation of the Pesticide Act, the actual amount of such administrative fine ~~shall be~~ is calculated by determining the base fine and making the necessary adjustments for gravity and the size of business as set forth in this section. The department may, however, issue any fine at the statutory maximum for any egregious violation. The base fines established for the specific violations of the Pesticide Act as set forth in Neb. Rev. Stat. §2-2646 are as follows:

007.01A ~~A violation of 2-2646(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 pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act; a pesticide that has a claim, a direction for its use, or labeling that differs from the~~

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~~representations made in connection with its registration; 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; a pesticide that is adulterated; a pesticide or device that is misbranded; a pesticide in a container that is unsafe due to damage; a pesticide which differs from its composition as registered; or a pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act.~~

007.01A(1) Base fine for a first violation is \$1,000.

007.01A(2) Base fine for a subsequent violation is \$2,000.

007.01B ~~A violation of 2-2646(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;~~

007.01B(1) Base fine for a first violation is \$1,000.

007.01B(2) Base fine for a subsequent violation is \$3,000.

007.01C ~~A violation of 2-2646(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;~~

007.01C(1) Base fine for a first violation is \$1,000.

007.01C(2) Base fine for a subsequent violation is \$4,000.

007.01D ~~A violation of 2-2646(4) or (5): To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide including use of 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, 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, or if preconstruction treatments are not listed on the label, then the minimum rate used must not be less than the minimum specified on the label for post-construction 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 the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, 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 methods of application specified or recommended on the labeling and does not more than minimally increase~~

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~~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;~~

007.01D(1) Base fine for a first violation is \$2,500.

007.01D(2) Base fine for a subsequent violation is \$5,000.

007.01E ~~A violation of 2-2646(6): To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the act or a rule or regulation adopted and promulgated under the act;~~

007.01E(1) Base fine for a first violation is \$1,000.

007.01E(2) Base fine for a subsequent violation is \$2,000.

007.01F ~~A violation of 2-2646(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 likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects; likely to pollute a water supply or waterway; or a violation of the Environmental Protection Act or a rule or regulation adopted pursuant to the act;~~

007.01F(1) Base fine for a first violation is \$4,000.

007.01F(2) Base fine for a subsequent violation is \$5,000.

007.01G ~~A violation of 2-2646(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;~~

007.01G(1) Base fine for a first violation is \$1,000.

007.01G(2) Base fine for a subsequent violation is \$2,000.

007.01H ~~A violation of 2-2646(9): To commit an act for which a certified applicator's license may be suspended, modified, revoked, or placed on probation under section 2-2644 whether or not the person committing the act is a licensed certified applicator;~~

007.01H(1) Base fine for a first violation is \$1,000.

007.01H(2) Base fine for a subsequent violation is \$2,000.

007.01I ~~A violation of 2-2646(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 a human or that pollutes ground water, surface water, or a water supply;~~

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007.01I(1) Base fine for a first violation is \$5,000.

007.01I(2) Base fine for a subsequent violation is \$5,000.

007.01J ~~A violation of 2-2646(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;~~

007.01J(1) Base fine for a first violation is \$1,000.

007.01J(2) Base fine for a subsequent violation is \$2,000.

007.01K ~~A violation of 2-2646(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;~~

007.01K(1) Base fine for a first violation is \$1,000.

007.01K(2) Base fine for a subsequent violation is \$2,000.

007.01L ~~A violation of 2-2646(13): To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;~~

007.01L(1) Base fine for a first violation is \$2,000.

007.01L(2) Base fine for a subsequent violation is \$5,000.

007.01M ~~A violation of 2-2646(14): To violate any state management plan or pesticide management plan developed or approved by the department;~~

007.01M(1) Base fine for a first violation is \$1,000.

007.01M(2) Base fine for a subsequent violation is \$5,000.

007.01N ~~A violation of 2-2646(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;~~

007.01N(1) Base fine for a first violation is \$1,000.

007.01N(2) Base fine for a subsequent violation is \$4,000.

007.01O ~~A violation of 2-2646(16): To use any pesticide which is under an experimental use or emergency use permit which is contrary to the provisions of such permit;~~

007.01O(1) Base fine for a first violation is \$2,000.

007.01O(2) Base fine for a subsequent violation is \$5,000.

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007.01P A violation of 2-2646(17): ~~To fail to follow any order of the department;~~

007.01P(1) Base fine for a first violation is \$2,000.

007.01P(2) Base fine for a subsequent violation is \$5,000.

007.01Q A violation of 2-2646(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.~~

007.01Q(1) Base fine for a first violation is \$2,000.

007.01Q(2) Base fine for a subsequent violation is \$5,000.

007.01R A violation of 2-2646(19) or (20): ~~To knowingly falsify all or part of any application for registration or alter or falsify all or part of a license or any other records required to be maintained pursuant to the Pesticide Act; and~~

007.01R(1) Base fine for a first violation is \$2,000.

007.01R(2) Base fine for a subsequent violation is \$5,000.

007.01S To violate any other provision of the act.

007.01S(1) Base fine for a first violation is \$1,000.

007.01S(2) Base fine for a subsequent violation is \$2,000.

007.02 Gravity adjustment criteria. The base administrative fine may be changed by considering the gravity of harm of the violation and the gravity of misconduct of the person committing the violation. The specific numerical value will be assigned to each category as set forth in the following charts:

007.02A Gravity of harm.

Violation	Circumstances	Value
Pesticide	Toxicity - Category I pesticides, signal word "DANGER", restricted-use pesticides (RUP's).	2
	General-use pesticides, toxicity - Category II, signal word "WARNING", and Categories III and IV, signal word "CAUTION."	1
Harm to Human Health	Actual serious or widespread harm to human health.	5
	Potential serious or widespread harm to human health.	4
	Minor actual harm to human health.	3
	Minor potential harm to human health, neither serious nor widespread.	2
	Harm to human health is unknown.	1
	No actual or potential harm to human health.	0
Environmental Harm	Actual serious or widespread harm to the environment (e.g., damage or contamination to crops, certified organic crops, water, livestock, wildlife, wilderness, or other sensitive natural areas).	5
	Potential serious or widespread harm to the environment.	4
	Minor actual harm to the environment.	3
	Minor potential harm to the environment, neither widespread nor substantial.	2
	Harm to environment is unknown.	1
	No actual or potential harm to the environment.	0

007.02B Gravity of misconduct.

Violation	Circumstances	Value
Compliance History	Two or more prior violations in previous three years of FIFRA or state law, either similar or unrelated to current violation.	3
	One prior violation in previous three years of FIFRA or state law similar to current violation.	2
	One prior violation in previous three years of FIFRA or state law unrelated to current violation.	1
	No prior FIFRA or Nebraska Pesticide Act violation.	0
Culpability	Knowing or willful violation of the statute. Knowledge of the general hazardousness of the action.	4
	Violation resulting from faulty, careless, or negligent action.	3
	Culpability unknown.	1
	Violation was neither knowing nor willful and did not result from faulty, careless, or negligent action.	0
Remedial Efforts	Violator voluntarily notified NDA of incident or violation.	-1
	Violator instituted steps to correct the violation immediately after discovery or notification of the violation.	-2
	Violator immediately notified NDA of incident and instituted steps to correct the violation.	-3
Financial Gain	Noncompliance with Pesticide Act has or would have resulted in significant financial gain for violator.	3
	No financial gain to violator as a result of violation.	0

007.02C To determine the total gravity value, the base fine shall be is adjusted based on the total number of points calculated from 007.02A and 007.02B above and multiplying it by the gravity adjustment values.

Adjustments for Gravity

Total Gravity Value	Adjustment
3 or below	25% of base value
4-6	50% of base value
7-10	75% of base value
11 or above	100% of base value

007.03 To determine the actual administrative fine, the fine as determined in 007.02C above shall be multiplied by the appropriate value corresponding with the size of business criteria set forth below. In determining the amount of any fine, there shall be a rebuttal presumption that the gross revenue from all sources of any violator is over \$800,000.

Size of Business Criteria

Gross Revenue From All Sources	Multiplier Value
\$0-200,000	0.2
\$200,001-400,000	0.4
\$400,001-600,000	0.6
\$600,001-800,000	0.8
over \$800,001	1.0

007.04 Nothing in these regulations shall prevent the department from entering into a settlement agreement with any person violating the Pesticide Act or the rules and regulations adopted and promulgated under it which specifies a different fine or penalty than specified in the act or regulation.

TITLE 25
Chapter 2

008 Worker Protection Standards (Arid REI extension). The counties listed below have an annual average rainfall of 25 inches or more over a 25 year period and are not subject to the arid Restricted Entry Interval (REI) extension for organophosphate or methyl-carbamate pesticides:

Adams	Fillmore	Pierce
Antelope	Gage	<u>Phelps</u>
	Hall	Platte
Boone	Hamilton	Polk
<u>Buffalo</u>	<u>Harlan</u>	Richardson
Burt	Jefferson	<u>Rock</u>
Butler	Johnson	Saline
Cass	Kearney	Sarpy
Cedar	<u>Keya Paha</u>	Saunders
	Knox	
Clay	Lancaster	Seward
	<u>Loup</u>	
Colfax	Madison	Thayer
Cuming	Merrick	Thurston
<u>Custer</u>	Nance	
Dakota	Nemaha	Washington
Dixon	Nuckolls	Wayne
Dodge	Otoe	Webster
Douglas	Pawnee	York

009 Emergency Exemption Permit.

009.01 ~~Upon satisfaction of the requirements of the Pesticide Act and the rules and regulations adopted and promulgated under it by an applicant, the~~ The department may allow the use application of a pesticide under an emergency exemption. ~~The department shall issue a permit to distribute the pesticide for the specific usages outlined on the permit. Such exemptions shall be contingent upon continued compliance by the registrant of the pesticide with the provisions of the act~~ Pesticide Act and these rules and regulations.

009.02 The registrant of an emergency exemption pesticide shall is obligated to ensure that such pesticide ~~shall be~~ is distributed only to those persons who have obtained a permit to distribute such pesticide in Nebraska.

009.03 Application. Any person wishing to distribute, including those persons only distributing to other dealers, an emergency exemption pesticide may make application to the department for a permit on forms provided by the department. Only persons holding such permits shall ~~be~~ are allowed to distribute the pesticide for such use application.

009.04 Issuance. The department may issue an emergency exemption permit to applicants who have completed the application and who have agreed to abide by the conditions set out in 009.05 below. Permits shall ~~be~~ are valid until the dates specified on the permit, unless sooner revoked by the department for a violation by the holder of the provisions of the act or the rules and regulations.

TITLE 25
Chapter 2

009.05 Conditions. All permits issued under 009.04 above ~~shall be conditioned as followed~~ are subject to the following:

009.05A Only products approved by the department pursuant to this rule and regulation ~~shall are allowed to~~ be distributed for use and only for the uses as identified on the permit.

009.05B Distribution shall ~~is only allowed to~~ be made to persons holding an emergency exemption permit, or the end user of the emergency exempted pesticide.

009.05C No distribution shall ~~is allowed to~~ in any way violate the restrictions of the label, or emergency labeling of the pesticide. The label and the emergency labeling shall ~~is to~~ be provided with the distribution of the pesticide.

009.05D No distribution shall ~~is allowed to~~ be made to any person whom the department has determined has violated the provisions of this rule and regulation or has violated the provisions of any emergency exemption permit issued to that person.

009.05E Persons distributing pesticides under an emergency exemption permit shall ~~are~~ only allowed to do so if they maintain records of distributions for at least three (3) years following the effective date of the distribution. Such records shall be are the same as those required for a restricted-use pesticide as set forth in 006.03 above. In addition, a final report shall is to be submitted to the Department of Agriculture of all distributions of the pesticide within 60 days following the end of the season or expiration of the permit.

009.06 Notification. ~~The department shall be informed by any~~ Any person that is aware of any adverse affects resulting from the use of the pesticide is to report such information to the department.

~~010 Technical Interpretations. Pursuant to §2-2626(4)(f) of the Pesticide Act, the department may, as it deems necessary or appropriate, issue technical interpretations that provide further guidance and policy on the use of pesticides to minimize or mitigate potential or documented negative impacts on humans or the environment.~~

~~010.01~~ Such technical bulletins may address issues set forth in §2-2646(4) of the Pesticide Act, including:

~~010.01A~~ The dosage, concentration, or frequency with which a pesticide is mixed, applied, or used;

~~010.01B~~ The target pests that may or may not be listed on the pesticide label. Technical interpretations for target pests may include a determination of whether a particular target pest is or is not biologically related to one listed on a pesticide label.

~~010.01C~~ The method or manner by which a pesticide may be used or applied. The method of use or application may include, but not be limited to application equipment, engineering standards, or new technology not previously available or indicated on a pesticide label; and

~~010.01D~~ The manner by which a pesticide is mixed or blended with other components.

TITLE 25
Chapter 2

~~010.02~~ Technical interpretations shall provide guidance regarding use inconsistent with the pesticide label as set forth in 007.01D above.

~~010.011~~ Annotation. Neb. Rev. Stat. §§2-2622 to 2-2659 (Reissue 2012 and LB 69 of 2013).

LEGISLATIVE BILL 320

Approved by the Governor April 24, 2019

Introduced by Albrecht, 17.

A BILL FOR AN ACT relating to the Pesticide Act; to amend sections 2-2628, 2-2630, 2-2632, 2-2637, 2-2640, 2-2643, 2-2643.02, 2-2645, and 2-2653, Reissue Revised Statutes of Nebraska, and sections 2-2624, 2-2626, 2-2629, 2-2635, 2-2636, 2-2638, 2-2639, 2-2641, 2-2642, 2-2646, and 2-2656, Revised Statutes Cumulative Supplement, 2018; to redefine terms; to update federal references; to change Department of Agriculture powers and duties; to change provisions relating to registration requirements and applications, service of process, labeling requirements, application fees, pesticide applicator and restricted-use pesticide provisions, commercial, noncommercial, and private applicator licenses, noncertified applicator restrictions, records requirements, license holder duties, violations, claims of damages, inspections, and prohibited acts; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 2-2624, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2624 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 concentration is not accurately ~~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, ~~2019~~ 2013;

(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 ~~belonging~~ 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, including information distributed in any electronic format, 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 7 U.S.C. 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 7 U.S.C. 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 7 U.S.C. 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a danger, warning, symbol, or cautionary ~~caution~~ statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or 7 U.S.C. 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

(1) 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 or a private 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 postsecondary educational institution in this state or (b) any employee or other person acting on behalf of a political subdivision of the state who is not a commercial applicator or a private 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 any destructive, detrimental, or undesirable:

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

(b) ~~Virus~~ 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 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, ~~2019~~ ~~2013~~, ~~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, ~~2013~~, 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 restricted-use pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned, or rented by, or under the general control of 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. To meet the definition of a private applicator, an employee of an employer described under this subdivision may only provide labor for the pesticide use. An employee who provides restricted-use pesticides or equipment used to apply restricted-use pesticides is a commercial applicator;

(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 7 U.S.C. section 136p of the federal act has been granted;

(39) 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;

(40) State pesticide applicator certification 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;

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

(42) 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 used for public health purposes 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;

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

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

Sec. 2. Section 2-2626, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2626 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, ~~2019~~ 2013. 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 specific time, locations, and conditions restricting the of use of a state-limited-use pesticide, including allowable quantities or concentrations, and may require that it be purchased or possessed only with ~~(i) With permission or under the 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 ~~may 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 7 U.S.C. 136i-1 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 or state-limited-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. part 171, as such regulations the ~~regulation~~ existed on January 1, ~~2019~~ 2013; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under 7 U.S.C. 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 or use of 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 or its use 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 for each violation on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take reasonable measures to assess and collect all fees and fines prescribed by the act and the rules or regulations adopted under the act;

(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;~~

(14) ~~(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;

(15) ~~(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;

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

(17) ~~(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;

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

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

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

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

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

Sec. 3. Section 2-2628, Reissue Revised Statutes of Nebraska, is amended to read:

2-2628 (1) Except as provided by subsection (2), (3), or (4) ~~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 through the state without being unloaded or stored at any point or 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.

(4) Registration may not be required, as determined by the department, if the pesticide is not required to be registered by the federal agency.

Sec. 4. Section 2-2629, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2629 (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 trade name of the pesticide;

(c) ~~Two~~ complete copy copies of all labeling to accompany the pesticide, including any web sites or other locations where electronic information about the pesticide may be found, 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 if the pesticide is not required by federal law to be registered under a use classification;

(f) ~~Either a A designation of a resident agent for service of process or a consent by the applicant to the jurisdiction of this state, for 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.

Sec. 5. Section 2-2630, Reissue Revised Statutes of Nebraska, is amended to read:

2-2630 (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) ~~The federal agency's designated registration and establishment numbers for the pesticide. 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 dangers, 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.

Sec. 6. Section 2-2632, Reissue Revised Statutes of Nebraska, is amended to read:

2-2632 (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 Pesticide Act or the federal 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 or its labeling or submitted material does not comply with a requirement of the Pesticide Act, act or the rules and regulations adopted and promulgated under the act, or the federal act; or

(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.~~

Sec. 7. Section 2-2635, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2635 (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; or

(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.

(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 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 either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for 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. The purpose of the additional fee is to cover the administrative costs associated with collecting fees.

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

All fees collected pursuant to this subsection 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.

Sec. 8. Section 2-2636, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2636 (1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. part 171, as the regulation existed on January 1, ~~2019~~ 2013, 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) At least eighteen years of age except as provided in subsection (6) of section 2-2642;

~~(b) (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; or~~

~~(b) Licensed as a private applicator; or~~

(c) Working 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 general-use 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 (4) (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use general-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 (4) (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.~~

Sec. 9. Section 2-2637, Reissue Revised Statutes of Nebraska, is amended to read:

2-2637 (1) The department may classify commercial and noncommercial licenses under subcategories within categories according to the subject, method, or place of pesticide application and ~~(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.~~

~~(2) (3) The Cooperative Extension Service of the University of Nebraska (Nebraska Extension), 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 which meet the requirements for private applicator certification training established in 40 C.F.R. 171.105, and provide all trainees with . The programs shall be directed toward thorough comprehension and knowledge on the safe use of restricted-use pesticides and general-use pesticides used by applicators required to be certified pursuant to sections 2-2636 to 2-2642. The Nebraska 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.~~

~~(3) All candidates for certification or recertification shall present valid government-issued identification at training sessions and certification or recertification examinations.~~

Sec. 10. Section 2-2638, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2638 (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 the rules and regulations adopted and promulgated under the 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 ~~general-use~~ pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, except as provided in subsection (3) of section 2-2636, 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. ~~The If the applicant is an individual,~~ the application shall include the applicant's 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 either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for 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.~~

Sec. 11. Section 2-2639, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2639 (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. ~~The If the applicant is an individual,~~ the application shall include the applicant's 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 the applicable 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) The department may deny a noncommercial applicator license if it determines that the applicant:

(a) Has had a license as a licensed certified applicator issued by this

state or another state revoked within the last two years;

(b) Has been unable to satisfactorily fulfill certification or licensing requirements;

(c) For any other reason is unable to fulfill the provisions of the Pesticide Act applicable to the category for which application is made;

(d) For an original noncommercial applicator license, has not passed an examination under sections 2-2637 and 2-2640; or

(e) Meets the definition of a private applicator.

(6) (5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for 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.

Sec. 12. Section 2-2640, Reissue Revised Statutes of Nebraska, is amended to read:

2-2640 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.

Sec. 13. Section 2-2641, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2641 (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.

(1) An individual (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. The If the applicant is an individual, the application shall include the applicant's date of birth.

(2) All candidates for certification or recertification must present valid government-issued identification at training sessions and certification or recertification examinations.

(3) (4) Application for an original or renewal private applicator license shall be made to the department on forms prescribed by the department and shall be 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.

Sec. 14. Section 2-2642, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2642 (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.

(4) A noncertified applicator (5) Notwithstanding sections 2-2636 to 2-2642, any individual required by the Pesticide Act to be a licensed certified commercial or noncommercial applicator may use general-use pesticides as a noncertified applicator prior to obtaining an initial license 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 meeting the requirements of 40 C.F.R. 171.201; and

~~(c) The noncertified applicator has received training meeting the requirements of 40 C.F.R. 171.201; and 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;~~

~~(d) The supervising certified applicator remains (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 is (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 fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the 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.~~

~~(5) A noncertified applicator required by the Pesticide Act to be a licensed certified commercial or noncommercial applicator may use a restricted-use pesticide which is not a fumigant, sodium cyanide, or sodium fluoroacetate as a noncertified applicator prior to obtaining an initial license for only one consecutive sixty-day period of time if:~~

~~(a) The noncertified applicator complies with the requirements of subsection (4) of this section; and~~

~~(b) The noncertified applicator does not apply the restricted-use pesticides aerially.~~

~~(6) A noncertified applicator required by the Pesticide Act to be a licensed certified private applicator may apply restricted-use pesticides for the purpose of producing agricultural commodities on property owned or rented by his or her immediate family for one consecutive twenty-four month period if:~~

~~(a) The noncertified applicator is at least sixteen years of age and working under the direct supervision of a licensed private applicator who is an immediate family member;~~

~~(b) The noncertified applicator has received training through a training session meeting the requirements of 40 C.F.R. 171.201; and~~

~~(c) The supervising certified applicator is in compliance with the requirements of 40 C.F.R. 171.201.~~

Sec. 15. Section 2-2643, Reissue Revised Statutes of Nebraska, is amended to read:

2-2643 (1) All applicators applying restricted-use pesticides are required ~~The department shall require each licensed certified applicator to maintain records of the use of all restricted-use pesticides. Licensed certified applicators who supervise noncertified applicators are required to document and maintain or verify the existence of and have access to the records required to be maintained by 40 C.F.R. 171.201.~~ 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.

Sec. 16. Section 2-2643.02, Reissue Revised Statutes of Nebraska, is amended to read:

2-2643.02 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. A license holder acting as a supervisor to a noncertified applicator is required to comply with the requirements of subsections (4), (5), and (6) of section 2-2642.

Sec. 17. Section 2-2645, Reissue Revised Statutes of Nebraska, is amended to read:

2-2645 (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 incident or damages, is outside the scope of the Pesticide Act, or is determined by the department to involve a matter which is

frivolous, ~~or~~ minor, or insignificant under the intent of the act. 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 receiving a written request. Nothing in this subsection shall be construed to require the department to take enforcement action in any matter.

(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 inspect observe, within reasonable hours, the property alleged to have been damaged. If the claimant refuses to permit the department to inspect the property alleged to have been damaged, or fails to provide additional information regarding the allegation when requested by the department, the department may decline to investigate the claim.

(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.

Sec. 18. Section 2-2646, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2646 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 or water 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 7 U.S.C. 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, advertise, recommend, 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 fines as prescribed by an order of the director, 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.

Sec. 19. Section 2-2653, Reissue Revised Statutes of Nebraska, is amended to read:

2-2653 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 applicator certification plan to the federal agency outlining the current program.

Sec. 20. Section 2-2656, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-2656 (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 before commencement of application of pesticides. 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. 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 coordinates, 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 either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for ~~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.~~

Sec. 21. Original sections 2-2628, 2-2630, 2-2632, 2-2637, 2-2640, 2-2643, 2-2643.02, 2-2645, and 2-2653, Reissue Revised Statutes of Nebraska, and sections 2-2624, 2-2626, 2-2629, 2-2635, 2-2636, 2-2638, 2-2639, 2-2641, 2-2642, 2-2646, and 2-2656, Revised Statutes Cumulative Supplement, 2018, are repealed.

