

**North Dakota Department of Agriculture Pesticide  
Registration and Exemption Guidelines  
Last Revised: August 14, 2002**

**Background**

The North Dakota Department of Agriculture is committed to ensuring human safety and protecting the environment through the proper use of pesticides. In addition, the Department acknowledges the critical role that pesticides play in producing high quality food and controlling economically important pests. Therefore, the Department uses its statutory authority to regulate the registration, distribution, sale, and proper use of pesticide products.

**FIFRA Section 3 Registrations**

Pesticide registration is described in Chapter 19-18 of the North Dakota Century Code. All pesticides must be registered with the North Dakota Department of Agriculture prior to their distribution, sale, or transport in the state. Each pesticide registration covers a designated two-year period beginning January first and expiring December thirty-first of the following year. Prior to receiving a registration, the applicant must provide the information and documentation described in Section 19-18-04 of the North Dakota Century Code. Product labels are reviewed for content to ensure that they meet federal requirements.

*Section 25(b) Products*

Section 25(b) products are characterized as reduced risk pesticides by EPA, and are exempt from EPA registration. However, Chapter 19-18 of the North Dakota Century Code requires the registration of all pesticides, and does not allow for registration exemptions. Therefore, all pesticides, including Section 25(b) products, must be registered with the North Dakota Department of Agriculture prior to their distribution, sale, or transport in the state. Labels of Section 25(b) products are thoroughly reviewed to ensure that they meet the requirements of EPA PR Notice 2000-6.

*Supplemental Distributor Registrations*

Supplemental distributor registrations are characterized as having a three-part EPA Registration Number such as XXXX-XXX-XXXX, where the left-most number indicates the primary registrant company number, the middle number indicates the product number, and the right-most number indicates the supplemental distributor company number. EPA does not review labels of products with supplemental distributor registration numbers. Therefore, North Dakota Department of Agriculture reviews supplemental distributor product labels to ensure that use directions do not differ from those in the EPA-stamped label. Consistent with EPA policy, the Department allows for the use directions on the supplemental distributor label to contain more restrictive directions or fewer uses than the EPA stamped label. However, use directions on

supplemental distributor labels cannot expand the uses allowed on the EPA-stamped label.

#### *Pesticide Devices*

The North Dakota Century Code does not require the registration of pesticide devices. Therefore, the North Dakota Department of Agriculture does not register simple mechanical pesticide devices as long as:

1. The product meets the definition of “device” in Section 19-18-02 of the North Dakota Century Code.
2. The pesticidal action of the product is a result of mechanical or physical destruction of the pest.
3. The product does not contain any chemical substance for which pesticidal claims are made.

The Department considers such things as rodent traps, sticky traps, flyswatters, water filters, and similar simple, mechanical devices to be pesticide devices.

#### *Co-Packs*

Many products are distributed and sold as co-packs with two or more components packaged together with the intent that the components will be mixed by the user. Often the co-pack components are registered pesticides themselves. The Department requires each component of a co-pack product to be registered separately. If the co-pack product itself has its own product name and it has its own EPA Registration Number, it will also be required to be registered.

### **FIFRA Section 24(c) Registrations**

The North Dakota Department of Agriculture encourages the use of Section 24(c) registrations to address special local needs. The Department uses Section 24(c) authority consistent with the publication “Guidance on FIFRA §24(c) Registrations” prepared by EPA on February 9, 1996.

Prior to granting a Section 24(c) registration, the Department must:

1. Obtain the consent of the product registrant.
2. Verify that a special local need exists, consistent with the EPA guidelines described above.
3. If the treated crop is to be used for food or feed, verify that the desired use is covered under existing permanent tolerances.

4. If the treated crop is to be used for food or feed, verify that the intended use pattern will not cause pesticide residues to exceed set tolerances. Pesticide residue data or a sound scientific argument from the registrant is required to make this determination.
5. Complete EPA form 8570-25, “Application for/Notification of State Registration of a Pesticide to Meet a Special Local Need”.
6. Approve supplemental labeling from the registrant allowing for the desired use.
7. Verify that the product is registered with the Department.

The product must be registered with the North Dakota Department of Agriculture consistent with Chapter 19-18 of the North Dakota Century Code. However, separate registration fees are not charged for Section 24(c) registrations.

Consistent with federal requirements, the North Dakota Department of Agriculture will notify the EPA of all Section 24(c) registrations within ten (10) days of their issuance. The notification package will consist of a cover letter describing the special local need and containing the assigned Section 24(c) Registration Number, a completed EPA form 8570-25, a copy of the approved supplemental labeling, any supporting data, and applicable letters of support.

Section 24(c) registrations are typically given an expiration date to allow a maximum of five (5) years of use. Ninety (90) days prior to the expiration date, the holder of the Section 24(c) registration will be contacted to determine whether they still support the Section 24(c) registration. The Department will also use this time to verify that a special local need still exists. If the registrant no longer supports the registration or a special local need no longer exists, the registration will expire on the expiration date. If the registrant supports the registration and the Department determines that a special local need still exists, a new Section 24(c) registration will be granted to allow an additional period of use up to five (5) years from the date that the new registration takes effect.

#### *“Me-too” Section 24(c) Registrations*

The North Dakota Department of Agriculture supports multiple product registrations, within reason, to address special local needs. Therefore, in an effort give North Dakota farmers as many pest management options as possible, the Department will issue multiple Section 24(c) registrations for competing products to address the same special local need if each registration request is supported with necessary data.

### **FIFRA Section 18 Exemptions**

The North Dakota Department of Agriculture supports the responsible use of Section 18 exemptions to address emergency pest situations. The Department does not support the

use of Section 18 exemptions as a means to simply gain use of a product prior to EPA granting a registration for the desired use. The Department considers a situation to be an emergency only if it meets EPA's criteria of being an "urgent" and "non-routine" situation.

The Department encourages commodity groups and growers to request Section 18 exemptions as early as possible in order for the Department to prepare a high-quality request package. Prior to submitting a Section 18 exemption request, the Department must verify that:

1. The situation meets the definitions of urgent and non-routine.
2. No effective pesticides are registered for control of the pest(s) under the emergency conditions.
3. No economically or environmentally feasible alternative control practices (including non-chemical control practices) are available.
4. The situation involves the introduction of a new or not previously prevalent pest, or will present significant risk to human health or the environment, or will cause significant economic loss.
5. Adequate progress has been made toward obtaining a Section 3 or 24(c) registration for the desired use if the request is a repeat request.

If, in the Department's opinion, a situation does not meet the criteria above, the Department will reject the Section 18 exemption request and notify the requestor of any data deficiencies within twenty-one (21) days of the receipt of the request. If additional data is provided after that time, the Department will re-evaluate whether the situation meets the criteria above.

If the situation meets the criteria described above, the Department will prepare a Section 18 exemption request document with supporting data. The Department will forward a copy of the Section 18 request document and the proposed supplemental labeling to the North Dakota Game and Fish Department, North Dakota Department of Health, and the local office of the Fish and Wildlife Service. These agencies will have a minimum of seven (7) days to provide comment on the request. Changes to the supplemental labeling or request document based on these comments will be made at the Department's discretion. However, all comments from these partner agencies will be forwarded to EPA. If time constraints do not allow for the receipt of comments from the partner agencies above, the Department will send the Section 18 exemption request package to EPA, notify partner agencies of the submission, and forward any comments to EPA.

The Section 18 exemption request package submitted to EPA includes the following:

1. Section 18 exemption request document with documentation that the situation meets the criteria above.
2. Letter of support from the registrant or manufacturer of the pesticide.
3. Copy of the proposed supplemental labeling.
4. Letter of support from NDSU extension personnel

If the exemption request is a repeat request, one (1) copy of the request package is submitted to EPA. If the exemption request is not a repeat request, the Department will submit three (3) copies of the request package.

When possible, Department will work with other neighboring state lead agencies to prepare joint Section 18 request packages.

#### *Crisis exemptions*

Crisis exemptions are reserved for those occasions in which an unforeseen emergency pest outbreak occurs with little or no warning. The Department will only declare a crisis exemption after notifying EPA of the Department's intended actions. If the crop is to be used as a feed or food source, the Department must determine that the intended use is covered under existing permanent or time-limited tolerances. If tolerances do not exist, the Department must obtain confirmation from EPA that the Agency will be able to set a permanent or time-limited tolerance by harvest time.

#### **FIFRA 2(ee) Recommendations**

The North Dakota Department of Agriculture considers 2(ee) recommendations to be advertising, not pesticide labeling. The Department neither officially approves nor disapproves 2(ee) recommendations. However, The Department reviews 2(ee) recommendations to ensure that use directions do not conflict with those on the full Section 3 label for the product(s) described in the recommendation. Section 2(ee) recommendations are filed and kept for a minimum of one (1) year from the date of receipt.

#### **Experimental Use Permits (EUPs)**

The North Dakota Department of Agriculture encourages registrants to develop pesticides and pesticide use patterns to provide North Dakota growers and ranchers with reliable, economical, and effective pest control tools. Therefore, the Department recognizes the importance of experimental research and the use of Experimental Use Permits (EUPs).

The Department will approve EUPs only if the applicant provides:

1. Documentation that EPA has granted the EUP, including the EUP number and effective dates.

2. Description of the proposed testing program, including disposition and fate of treated crops.
3. Description of the location(s) where the research will take place.
4. List of cooperating landowners with contact information.

The applicant will be notified in writing within seven (7) days of the Department's approval of the EUP. The Department reserves the right to include additional restrictions to the EUP. Unless prior approval is granted, the applicant must notify the Department a minimum of 48 hours prior to any pesticide applications made under the EUP. The Department's enforcement branch will receive a copy of the Department's letter granting the EUP and will be notified of any planned pesticide applications under the permit.

The North Dakota Department of Agriculture does not charge separate fees for EUPs. However, EUP numbers are assigned and registered with the Department for tracking purposes. A copy of the EUP application and supporting information will be kept on file in the Department for a minimum of one (1) year from the expiration date of the permit.

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