

**12:56:01:01. Definitions.** Terms defined in SDCL 38-21-14 shall have the same meaning in this article.

In addition, terms used in this article mean:

- (1) "~~Accident Incident~~," an ~~undesirable unexpected~~ event caused by the use of a pesticide that adversely affects man or the environment;
- (2) "Act," the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135 et seq., as amended by the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973;
- (3) "Agency," the United States environmental protection agency;
- (4) "Appurtenances," valves, pumps, fittings, pipes, hoses, and metering devices that are used for transferring pesticides or otherwise used in conducting operational area activities pertaining to pesticides;
- (5) "Bulk pesticide," any volume of a pesticide which is transported or held in an immediate reusable container in undivided quantities greater than 100 pounds net dry weight or 55 U.S. gallons liquid measure. The term does not include pesticides which are in the custody of the ultimate user and are fully prepared for use by the user;
- (6) "Bulk pesticide storage facility," an any area, location, tract of land, building, structure, or premises constructed in accordance with rules promulgated by the secretary for the storage of bulk pesticides;
- (7) "Bulk repackaging," the transfer of bulk pesticide from one container to another in an unaltered state in preparation for sale;
- (8) "Carrier," a person engaged in the transporting of passengers or goods for hire;
- (9) "Certification," the process by which the South Dakota department of agriculture determines whether or not a person is a competent pesticide applicator;
- (10) "Clay soil," any substance consisting of a mixture of the following components in the stated percentages of total soil weight: clay particles of the size of .02 mm or less (40% minimum); silt particles of the size of .05 mm to .002 mm (40% maximum); fine sand particles of the size of .25 mm to .05 mm (45% maximum);
- (11) "Compatibility," a property of a pesticide which permits its use with other chemicals without undesirable results being caused by the combination;

(12) "Competent," qualified in the performance of functions associated with pesticide application, the degree of proficiency required being directly related to the nature of the activity and the associated responsibility;

(13) "Complete destruction," alteration of pesticides by physical or chemical processes to inorganic forms, incapable of altering the environment;

(14) "Container," a package, can, bottle, bag, barrel, drum, tank, or other containing device used to enclose a pesticide or pesticide related wastes but not spray applicator tanks and nurse tanks which contain pesticides which are fully prepared for use;

(15) "Department," the department of agriculture;

(16) "Diluent," material added to a pesticide or a pesticide-related waste by the user or manufacturer to reduce the concentration of active ingredient;

(17) "Discharge," any spill, leak, deposit, dumping, or emptying, either accidental or otherwise, that results in a release of a pesticide into an uncontained portion of an operational area, but not lawful transfer, mixing, loading, unloading, repackaging, or refilling of a pesticide carried out over operational area containment and not lawful distribution, use, disposal, or application of a pesticide;

(18) "Distribute," to import, consign, sell, offer for sale, solicit orders for sale, or otherwise supply pesticide for sale or use in this state;

(19) "Drift," movement of a pesticide during or after application or use through air to a site other than the intended site of application or use;

(20) "Encapsulate," to seal a pesticide, and its container if appropriate, in an impervious container made of plastic, glass, or other material which will not be chemically degraded by the contents and then seal the container within a durable container made from steel, plastic, concrete, or other suitable material of sufficient thickness and strength to resist physical damage during and subsequent to burial;

(21) "Excess pesticides," pesticides which may not be legally sold pursuant to the Act or which are to be discarded;

(22) "Hazard," probability that a given pesticide will have an unreasonable adverse effect on man or the environment in a given situation;

(23) "Heavy metals," metallic elements of higher atomic weights, including arsenic, beryllium, cadmium, copper, lead, mercury, manganese, zinc, chromium, tin, thallium, and selenium;

(24) "Inorganic arsenicals," any compound containing arsenic in which the arsenic is not bonded to the carbon atom;

(25) "Inorganic pesticides," substances containing noncarbon hydrogen which are used as pesticides;

(26) "Lake," a pond or reservoir created by either natural or artificial means, but not ponds and appurtenances used for the treatment and disposal of wastes and permitted for such uses by the state;

(27) "Leachate," the end product of percolating a liquid through solid waste so that dissolved or suspended materials are extracted from it;

(28) "Metallo-organic pesticide," a class of carbon hydrogen pesticides containing one or more metal or metalloid atoms in the structure;

(29) "Nonpermanent bulk pesticide storage containers," mobile containers positioned on or part of movable equipment, such as trucks, trailers, and tank cars;

(30) "Open burning," combustion of a pesticide or container in any fashion other than incineration in a pesticide incinerator;

(31) "Open dumping," the placing of pesticides or pesticide containers in a land site in a manner other than prescribed by the South Dakota department of environment and natural resources in chapter 74:27:03, and which does not prevent adverse effects on the environment, and which exposes pesticides and pesticide containers to the elements, vectors, and scavengers;

(32) "Operational area," an area where the contents of pesticide containers are transferred between containers, including transfer to application equipment; where pesticides are loaded, unloaded, mixed, repackaged, or refilled; or where pesticides are cleaned, washed, or rinsed from containers or from application, handling, storage, or transportation equipment; but not a facility or location that receives or distributes pesticides in the manufacturer's original unbroken containers which remain sealed and are otherwise unopened;

(33) "Operational area containment," any structure or system constructed in accordance with chapter 12:56:17, either stationary or portable, which is effectively designed and constructed to intercept

and contain pesticide discharges, including container or equipment wash water and rinsates, and to prevent escape, runoff, and leaching from an operational area;

(34) "Organic pesticides," substances containing carbon hydrogen which are used as pesticides, excluding metallo-organic compounds;

(35) "Permanent bulk pesticide storage containers," containers which are not positioned on or a part of movable equipment, such as trucks, trailers, and tank cars;

(36) "Pesticide incinerator," any installation capable of the controlled combustion of pesticides at a temperature of 1,000 degrees centigrade for two seconds dwell time that will assure complete conversion of the specific pesticide to inorganic gases and solid ash residues;

(37) "Principal operational area," the operational area where a pesticide applicator conducts the majority of the activities listed under "operational area";

(38) "Residential premises," a structure that is used wholly or in part as a human residence, including all lawns, grounds, facilities, and furnishings pertaining to that structure; a residential structure occupied on a rental basis; and a mobile home used as a residence and the site on which it is located;

(39) "Runoff," the portion of precipitation that drains from an area as surface flow;

(40) "Sanitary landfill," a disposal facility approved or permitted by the state under chapter 74:27:04, employing an engineered method of disposing of solid wastes on land in a manner which minimizes environmental hazards by spreading the solid wastes in thin layers, compacting the solid wastes to the smallest practical volume, and applying cover material at the end of each working day;

(41) "Scrubbing," washing of impurities from any process gas stream;

(42) "Soil injection," the placement of pesticides by ordinary tillage practices within the plow layer of a soil;

(43) "Specially designated landfill," a landfill designated by the South Dakota department of environment and natural resources where pesticide-related waste, pesticides, and pesticide containers can be disposed of legally and where such dumping does not expose the public, the environment, or surface and subsurface waters to any contamination;

(44) "Statute," SDCL 38-21-14 to 38-21-55, inclusive;

(45) "Stream," a river, creek, or tributary;

(46) "Transitory," a mobile nonpermanent outlet such as a truck;

(47) "Triple rinse," upon emptying by flushing of containers three times, each time using a volume of the normal diluent equal to approximately 20 percent of the containers' capacity, and adding the rinse liquid to the spray mixture or disposing of it by a method prescribed for the pesticide in chapter 12:56:02;

(48) Repealed;

(49) "Unreclaimable residues," residual materials of little or no value remaining after incineration;

(50) "Water dumping," disposal of pesticides into or on lakes, ponds, rivers, sewers, and other water systems;

(51) "Well," an artificial excavation or opening in the ground that is deeper than its largest surface dimension, that is made by digging, boring, drilling, jetting, or other artificial method for the purpose of obtaining groundwater, and that is currently used or usable or has been abandoned;

(52) "Well injection," disposal of excess pesticides and rinse liquids through a hole or shaft to a subsurface stratum;

(53) "Wetlands," those areas that are inundated or saturated by surface or groundwater and on which a prevalence of vegetation typically adapted for life in saturated soil conditions has been established.

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 96, effective December 8, 1985; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986; 18 SDR 49, effective September 15, 1991; 38 SDR 40, effective September 20, 2011.

**General Authority:** SDCL 38-21-15, 38-21-15.1, 38-21-51.

**Law Implemented:** SDCL 38-21-15, 38-21-15.1, 38-21-51.

## **CHAPTER 12:56:05**

### **CERTIFICATION OF APPLICATORS**

#### **Section**

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|-------------|---|
| 12:56:05:01 | Renewal of applicator certification.        |
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- 12:56:05:04 General standards for certification of commercial applicators.
- 12:56:05:04.01 Additional standards for certification in agricultural plant pest control.
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- 12:56:05:04.03 Additional standards for certification in forest pest control.
- 12:56:05:04.04 Additional standards for certification in ornamental and turf pest control.
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- 12:56:05:04.06 Additional standards for certification in aquatic pest control.
- 12:56:05:04.07 Additional standards for certification in right-of-way pest control.
- 12:56:05:04.08 Additional standards for certification in industrial, institutional, structural, and health related pest control.
- 12:56:05:04.09 Additional standards for certification in public health pest control.
- 12:56:05:04.10 Additional standards for certification in regulatory pest control.
- 12:56:05:04.11 Additional standards for certification in demonstration and research pest control.
- 12:56:05:04.12 Additional standards for certification in rodent and bird pest control.
- 12:56:05:04.13 Additional standards for certification in predator pest control.
- 12:56:05:04.14 Additional standards for certification in grain fumigation pest control.
- 12:56:05:04.15 Additional standards for certification in wood preservative pest control.
- 12:56:05:04.16 Repealed.
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- 12:36:05:04.18 Additional standards for certification in aerial right of way.
- 12:56:05:05 Test to include knowledge of laws and regulations.
- 12:56:05:05.01 Repealed.
- 12:56:05:06 Contents of application for applicator license.
- 12:56:05:07 Information to be included on aerial application. Repealed.
- 12:56:05:08 Repealed.
- 12:56:05:09 Repealed.
- 12:56:05:10 Repealed.
- 12:56:05:11 Repealed.

12:56:05:12 Repealed.

**12:56:05:01. Renewal of applicator certification.** Certification required for an applicator's license shall be maintained by taking and passing a written ~~open book~~ examination with a score of at least 70 percent, every two years following the initial certification ~~by a written open book examination~~. Certification requirements must be met before a license can be issued.

In lieu of a renewal examination, attendance at a certification ~~shortcourse~~ course held under the direction of the department shall qualify the licensed applicator for maintenance of certification.

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-33.

**12:56:05:02. Initial certification based on examination.** Applicators requiring a license must be certified to be eligible for a license. Initial certification is obtained by completing ~~To be initially certified prior to obtaining an applicator's license, a written, open book examination furnished by the department shall be taken and passed with a score of at least 70 percent. Applicators requiring a license must be certified to be eligible for a license.~~

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-33.

**12:56:05:06. Contents of application for applicator license.** An application for a licensed applicator, licensed operator, and public operator's license must contain the following:

- (1) The name of the applicant;
- (2) The applicant's partnership or organization and its permanent address;
- (3) The local base of operation and maintenance;
- (4) The telephone number;
- ~~(5) Whether or not the applicant is applying for a licensed public operator license;~~
- ~~(6) What classifications the applicant wishes to be certified for;~~

(75) Whether the applicant wishes to be certified as a ground applicator, an aerial applicator, or both; and

(86) The date and the signature of the applicant.

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-18.

~~12:56:05:07. Information to be included on aerial application.~~ If an applicant applies for the subclass aerial application, the applicant must furnish additional information, including:

- ~~—— (1) The applicant's South Dakota pilot's registration;~~
- ~~—— (2) The applicant's federal airman's certificate number and rating;~~
- ~~—— (3) The number of aircraft to be used in operations and their model number, make, federal number, and South Dakota's registration number;~~
- ~~—— (4) The agricultural aircraft operator's federal aeronautics administration certificate date and number;~~
- ~~—— (5) Total solo flight hours and the total solo flight hours in the type and class aircraft to be used;~~
- ~~—— (6) The total of solo flight hours within the preceding 12 months in types and class of aircraft to be used;~~
- ~~—— (7) The number of acres the applicant treated the past year in South Dakota;~~
- ~~—— (8) The total number of hours spraying and dusting experience;~~
- ~~—— (9) The number of equivalent hours of experience during the past year and the nature of the equivalent hours;~~
- ~~—— (10) Whether the applicant will operate under the supervision of a class A operator's permit holder and, if so, the name, address, and South Dakota permit number;~~
- ~~—— (11) Whether the aircraft to be used, with equipment attached, has the approval of the Federal Aeronautics Administration; and~~

~~—— (12) Whether the applicant or the company or employer for which the applicant worked has ever been denied permission to spray in any state and, if so, the year and reason for denial and the state and company.~~

~~—— Source: 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.~~

~~—— General Authority: SDCL 38-21-51.~~

~~—— Law Implemented: SDCL 38-21-18.~~

## CHAPTER 12:56:06

### DAMAGE CLAIMS

#### Section

12:56:06:01      Contents of report form for alleged pesticide damage incident.

**12:56:06:01. Contents of report form for alleged pesticide damage incident.** The report form required by SDCL 38-21-46 shall contain, but shall not be limited to, the following:

- (1) ~~Claimant's~~ name and address of person making the report;
- (2) ~~Claimant's~~ telephone number of person making the report;
- (3) County and legal description of property where incident occurred or damage is alleged;
- (4) Date, approximate time, weather conditions including wind direction, and temperature when application was made, if known;
- (5) County and legal description of property on which application was made;
- (6) Operator of property where application was made;
- (7) Description of incident or damages;
- (8) Name of applicator or operator applying pesticides;
- (9) Name of witness, if known;
- (10) Whether ground or aerial application; crop treated;
- (11) Chemical used, if known; if the applicator was notified and, if so, when; and
- (12) The date the claim was prepared incident form was submitted and the signature of ~~claimant~~ the person completing the form.

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-46.

## **CHAPTER 12:56:07**

### **COMMERCIAL APPLICATOR RECORDS**

#### Section

- 12:56:07:01 Required applicator records.
- 12:56:07:02 Availability of records to the department.
- 12:56:07:03 Records to be kept for three years.
- 12:56:07:04 Applicator to make record of application available to customer.
- 12:56:07:05 Information to be furnished upon department request.

**12:56:07:01. Required applicator records.** Each commercial applicator shall keep records which shall include the following for each application:

- (1) The name and address of the person for whom the pesticide was applied;
- (2) The location of the land or property where the pesticide was applied;
- (3) The pest to be treated;
- (4) The acreage, area, or number of plants or animals treated or other appropriate description;
- (5) The year, month, day, and time the pesticide was applied;
- (6) The person or firm who applied the pesticide;
- (7) The trade or brand name and common name of the pesticide applied;
- (8) The company name appearing on the product label;
- (9) The weather conditions at the time of application, including direction and estimated velocity of the wind and the temperature at the time the pesticide was applied (this requirement does not apply to application of baits in bait stations or pesticide applications in or immediately adjacent to structures);
- (10) Amount of the pesticide applied and concentration in pounds or gallons per unit or percentages of active ingredient per unit of the pesticide used;
- (11) Specific crop or designated site or commodity to which pesticide application was made; and

(12) Name and address of the applicator.

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-24.

**12:56:07:03. Records to be kept for three years.** Records of pesticide applications made by each commercial applicator must be kept by the applicator for three years from the date of the application of any pesticides. The department must, upon written request, be furnished with a copy of these records, which must include the information required by § 12:56:07:01.

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 38 SDR 40, effective September 20, 2011.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-24.

**12:56:07:04. Commercial Applicator to make record of application available to customer.** Upon written request, each commercial applicator must provide the customer with a record of each application of pesticide applied to the customer's land.

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 38 SDR 40, effective September 20, 2011.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-24.

**12:56:07:05. Information to be furnished upon department request.** The department may require any commercial applicator, not more than once in any five-year period, to furnish the department with a summary for the preceding year, which shall include the following information by county: crop, site, or commodity treated, pest treated, trade or brand name and common name of pesticide applied, the percent of or pounds of active ingredient per gallon, and total volume used. The secretary of agriculture

may require the information to be submitted more often than once every five-year period if circumstances require that such data are needed to protect the health and well-being of the citizens of South Dakota.

All summaries and the information therein submitted to the department shall be held in confidence unless that information is used by the department to compile an area or state-wide report of usage of pesticides by commercial applicators or is subpoenaed by a court of law.

The department may not issue a renewed license or allow a certification to be renewed if the commercial applicator applying for such a license or certification has not submitted the requested summary for the preceding year.

**Source:** 1 SDR 65, effective March 27, 1975; 2 SDR 53, effective January 18, 1976; 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 13 SDR 37, effective October 8, 1986; SL 2003, ch 214, § 1, effective July 1, 2003.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-24.

**12:56:10:01. Licensed pesticide dealers' license application form.** Licensed pesticide dealer license application forms shall include, but not be limited to, the following: (1) name of applicant; (2) firm name; (3) firm's permanent address and telephone number; and (4) whether or not the applicant has a current licensed pesticide applicator license.

**Source:** 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-33.5.

**12:56:10:03. Dealer license examination.** Applicants for a licensed pesticide dealer license must be tested by writing an open-book examination. ~~This examination must be available at county extension offices and at the pesticide office of the Department of Agriculture.~~ The standards of competence proven by taking and passing this examination by a score of at least 70 percent are the same as those standards in § 12:56:05:04. If an applicant fails the exam, the applicant may be reexamined in three days.

**Source:** 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-33.1.

**12:56:10:04. Dealers must attend pesticide certification shortcourse.** If a person who has taken and passed the licensed pesticide dealer license examination does not attend a certification shortcourse at least biennially, the person must ~~be reexamined~~ be tested by writing an examination and passing the examination by a score of at least 70 percent before the person may obtain a licensed pesticide dealer license.

**Source:** 2 SDR 53, effective January 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-33.1.

**12:56:12:01. Standards for private applicator certification.** A private applicator must demonstrate a practical knowledge of pest problems and pest control practices to the applicable agricultural operations of proper storage, use, handling, and disposal of pesticides and containers and of the legal responsibilities involved in the application, handling, and disposal of pesticides. Applicators must complete a written examination furnished by the department with a score of at least 70 percent. This practical knowledge includes ability to do the following:

- (1) Recognize common pests to be controlled and damage caused by them;
- (2) Read and understand the label and labeling information including the common name of pesticide applied, pest or pests to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions, and any specific disposal procedures;
- (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;
- (4) Recognize local environmental situations that must be considered during application to avoid contamination; and
- (5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

**Source:** 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-18, 38-21-23, 38-21-52.

**12:56:12:02. Private applicator certification.** Private applicators shall be certified by completing either a training course approved by the department or a home study course approved by the department.

**Source:** 4 SDR 23, effective October 20, 1977; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 38 SDR 40, effective September 20, 2011.

**General Authority:** SDCL 38-21-51.

**Law Implemented:** SDCL 38-21-18, 38-21-52.