

## **CHAPTER 4-33 PLANT PESTS**

### **4-33-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.
2. "Commissioner" means the agriculture commissioner or the commissioner's authorized representative.
3. "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.
4. "Infested" means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.
5. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.
6. "Permit" means a document issued or authorized by the commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.
7. "Person" means any individual, corporation, limited liability company, company, society, or association, or other business entity.
8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism which can cause damage to a plant or part thereof or any processed, manufactured, or other product of plants.
9. "Phytosanitary certificate" means an international document issued or authorized by the commissioner stating that a plant or plant product is considered free from quarantine pests and practically free from injurious pests and that they are considered to conform with the current phytosanitary regulations of the importing country.
10. "Plant" means agronomic field crops, horticultural crops, and native and tame grasses used for livestock production.
11. "Regulated article" means any article of any character as described in the quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.

### **4-33-02. Administration - Rulemaking authority.**

The commissioner shall administer this chapter. The commissioner shall employ an individual who has a baccalaureate degree in entomology, plant pathology, or biological sciences. The commissioner may adopt rules to carry out this chapter.

### **4-33-03. Authority for voluntary measures.**

The commissioner, either independently or in cooperation with counties or political subdivisions thereof, cities, towns, farmers' associations or similar organizations, individuals, federal agencies, or agencies of other states, is authorized to carry out operations or measures to locate; to suppress, control, or eradicate; or to prevent or retard the spread of pests with the consent of the owners of the property involved.

### **4-33-04. Authority for plant quarantine.**

The commissioner is authorized to quarantine this state or any portion thereof when the commissioner determines that such action is necessary to prevent or retard the spread of a pest within or from this state and to quarantine any other state or portion thereof whenever the commissioner determines that a pest exists therein and that such action is necessary to prevent or retard its spread into this state. Before promulgating the determination that a quarantine is necessary, the commissioner shall, after due notice to interested parties, hold a public hearing under such rules as the commissioner shall promulgate, at which hearing any interested party may appear and be heard either in person or by attorney, provided, the commissioner may impose a temporary quarantine for a period not to exceed ninety days during which time a public hearing, as provided herein, must be held if it appears that a quarantine for more than the

ninety-day period will be necessary to prevent or retard the spread of the pest. The commissioner shall give notice of the establishment of the quarantine in such newspapers in the quarantined area as the commissioner selects. The commissioner may limit the application of the quarantine to the infested portion of the quarantined area and appropriate environs, to be known as the regulated area, and may, without further hearing, extend the regulated area to include additional portions of the quarantined area upon publication of a notice to that effect in such newspapers in the quarantined area as the commissioner selects or by direct written notice to those concerned.

Following establishment of the quarantine, no person may move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into, or through this state contrary to regulations promulgated by the commissioner. Notice of the regulations must be published in such newspapers in the quarantined area as the commissioner may select.

The regulations may restrict the movement of the pest and any regulated articles from the quarantined or regulated area in this state into or through other parts of this state or other states and from the quarantined or regulated area in other states into or through this state and shall impose such inspection, disinfection, certification, or permit and other requirements as the commissioner deems necessary to effectuate the purposes of this chapter.

#### **4-33-05. Authority for abatement and emergency measures.**

Whenever the commissioner finds any article that is infested or reasonably believed to be infested or a host or pest exists on any premise or is in transit in this state, the commissioner may, upon giving notice to the owner or the owner's agent in possession thereof, seize, quarantine, treat, or otherwise dispose of such pest, host, or article in such manner as the commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the spread of a pest, or the commissioner may order such owner or agent to so treat or otherwise dispose of the pest, host, or article. If large areas or metropolitan areas, involving many people, are to be treated, notice may be by means of newspaper, radio, or other news media. Such notice must prominently appear, at least ten days prior to treatment, in at least three issues of a daily paper having local coverage.

#### **4-33-06. Authority for inspections - Warrants.**

To effectuate the purposes of this chapter, the commissioner may with a warrant or the consent of the owner make reasonable inspection of any premises in this state and any property therein or thereon and may without a warrant with the assistance of any law enforcement agency provided for in this code stop and inspect, in a reasonable manner, any means of conveyance moving within this state upon probable cause to believe it contains or carries any pest, host, or other article subject to this chapter, and may make any other reasonable inspection of any premises or means of conveyance for which, under the Constitution of the United States and the Constitution of North Dakota, no warrant is required.

The appropriate district courts in this state may issue warrants for such inspections upon a showing by the commissioner that there is probable cause to believe that there exists in or on the property to be inspected a pest, host, or other article subject to this chapter.

#### **4-33-07. Cooperation.**

1. The commissioner is authorized to cooperate with any agency of the federal government in such operations and measures as the commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the spread of any plant pest including the right to expend state funds on federal lands.
2. The commissioner is authorized to cooperate with agencies of adjacent states in such operations and measures as the commissioner deems necessary to locate; to suppress, control, or eradicate; or to prevent or retard the spread of any pest, provided, that the use of funds appropriated to carry out this chapter, for operations in adjacent states, must be approved in advance by the governor or the governor's designee.

#### **4-33-08. Penalties.**

Any person who violates any of the provisions of this chapter or who uses without authority any certificate or permit or other document provided for in this chapter or in the regulations of the commissioner provided for in this chapter, is deemed guilty of a class A misdemeanor. Any person who has knowingly moved any regulated article into this state from any quarantined area of any other state, which article has not been treated or handled under provisions of the quarantine and regulations, in effect at the point of origin, shall be guilty of a class A misdemeanor. In addition to criminal sanctions, a person found guilty of violating this chapter or regulations is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32. The commissioner may, in accordance with the laws of North Dakota, maintain an appropriate civil action in the name of the state against any person violating this chapter.

#### **4-33-09. Authority for compensation.**

The commissioner, when determined necessary to fulfill the objectives of this chapter, may authorize the payment of reasonable compensation to growers in infested areas for not planting host crops pursuant to instructions issued by the commissioner prior to the planting season, for losses resulting from the destruction of any regulated articles, provided, no payment may be authorized for the destruction of regulated articles moved in violation of any regulation or any host planted contrary to instructions issued by the commissioner, and further provided, that any compensation payment program must be approved by the state legislative assembly.

#### **4-33-10. Authority for local pest control and regulations.**

The governing body of any political subdivision of North Dakota, by ordinance or resolution, may adopt and enforce regulations to control and prevent the spread of pests. If state regulations are in effect, any similar local regulations must be approved by the commissioner. State regulations shall be in effect if the commissioner finds that adequate measures are not being taken by the political subdivision. The commissioner shall notify the appropriate officials of the political subdivision before any action is taken by the commissioner. Such regulations may authorize appropriate officers and employees to enter and inspect any public or private place which might harbor pests.

#### **4-33-11. Authority for financing local control programs - County pest coordinator.**

1. The governing body of any political subdivision may appropriate money for the control of pests under this chapter. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs to be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in this event the governing body, except the governing body of a park district, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, may levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that the levy may not exceed the limitation in subsection 1 of section 57-15-28.1.
2. The board of county commissioners for any county shall designate an individual to serve as county pest coordinator. The county weed control officer may serve in that capacity if approved by the board of county commissioners. The county pest coordinator shall administer local and private funds in cooperation with state and federal pest control programs. When state funds are involved, the county pest coordinator shall submit county and township control plans to the agriculture commissioner for approval.

**4-33-12. Authority for domestic and export certification.**

The commissioner may inspect any plant and plant product, when offered for export or shipment from within the state and to certify to shippers and interested parties as to the freedom of such products from injurious pests according to the phytosanitary requirements of other states and foreign countries. Authority for inspection and certification under this section is not limited to plants defined in section 4-33-01. The commissioner may make reasonable charges and use any means necessary to accomplish this objective. A portion of the fees collected may be deposited in the commissioner's operating fund equivalent to the amount that the United States department of agriculture assesses the department for federal plant export certificates issued by the commissioner. A certificate may be withheld or not issued if the product does not meet phytosanitary or import requirements and if all North Dakota licensing and bonding requirements have not been met. Consignee names and addresses on phytosanitary certificates are confidential.