

# **PESTICIDES REGULATIONS 2011**

## **SAMOA**

### Arrangement of Provisions

#### **PART I PRELIMINARY**

1. Short title and commencement
2. Interpretation

#### **PART II ADMINISTRATION**

3. Pesticides Technical Committee
4. Functions of the Committee
5. Composition of the Committee
6. Registrar of Pesticides
7. Register of Pesticides
8. Confidential information

#### **PART III - REGISTRATION OF PESTICIDES**

9. Requirement for registration
10. Exemption from registration
11. Procedure for application for registration
12. Decision on application for registration
13. Criteria for registration and refusal
14. Change of particulars
15. Cancellation of certificate
16. Submission of new application

#### **PART IV – LICENCES AND PERMITS**

17. Requirement for license
18. Procedure for application for a license
19. Decision on application for a license
20. Revocation or suspension of license
21. Restricted Pesticide Permits

#### **PART V DEALING WITH PESTICIDES**

22. Presentation of pesticides
23. Labelling of containers
24. Handling and use of pesticides
25. Storage of pesticides

- 26. Obsolete pesticides
- 27. Disposal of pesticides
- 28. Advertising of pesticides
- 29. Adulteration
- 30. Record keeping

**PART VI  
ENFORCEMENT**

- 31. Appointment of authorised officers
- 32. Powers of authorised officers
- 33. Relationship to other enforcement agencies
- 34. Offences relating to documents
- 35. General penalty
- 36. Proof and presumptions

**PART VII  
ANALYSIS**

- 37. Analysts and laboratories
- 38. Taking of samples
- 39. Certificate of analysis

**PART VIII  
APPEALS**

- 40. Appeals
- 41. Appeal powers of the Committee and Minister

**PART IX  
MISCELLANEOUS**

- 42. Codes of Practice
- 43. Liability
- 44. Repeals
- 45. Transitionals

Schedule

**PURSUANT** to section 15(2)(d) of the Agriculture, Forests and Fisheries Ordinance 1959, I, **TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet, **MAKE** the following regulations:

**DATED** this... 31<sup>st</sup> ...day of..... October .....2011

*Tui Atua Tupua Tamasese Efi*

(Tui Atua Tupua Tamasese Efi)

**HEAD OF STATE**

## REGULATIONS

### PART I PRELIMINARY

**1. Short title and commencement** – (1) These regulations may be cited as the Pesticides Regulations 2011.

(2) These regulations commence on the day they are made.

**2. Interpretation** – In these regulations, unless the contrary intention appears:

“**active ingredient**” means the biologically active part of the pesticide present in a formulation;

“**advertise**”, in relation to a pesticide, means to promote the sale or use of the pesticide by print or electronic media signs, displays, gifts, demonstration, word of mouth, or by any other means;

“**analyst**” means a person authorised as an analyst under regulation 37(1) or a person who does analysis under the auspices of a designated laboratory;

“**application equipment**” refers to sprayers and spreaders;

“**authorised officer**” means a person appointed as an authorised officer under regulation 31;

“**Committee**” means the Pesticides Technical Committee established under regulations 3;

“**certificate**” means a registration certificate issued under regulation 11;

“**common name**”, in relation to a pesticide, means the name assigned to the pesticide’s active ingredient by the International Standards Organization to be used as a generic non-proprietary name for that particular active ingredient only;

“**concentration**” means the proportion of active ingredient in a pesticide;

“**container**” means anything in which or by which a pesticide is encased, covered, enclosed, contained or packed, including material in contact with the pesticide;

“**designated laboratory**” means a laboratory

designated for the purposes of these regulations under regulation 37(2);

**“FAO Code of Conduct”** means the International Code of Conduct on the Distribution and Use of Pesticides adopted by the Council of the Food and Agriculture Organisation of the United Nations Council in November 2002, (and includes any amendment to it);

**“formulation”** means the combination of various ingredients designed to render the product useful and effective for the purpose claimed;

**“inspector”** refers to a person appointed as an authorised officer under regulation 31;

**“label”**, in relation to a pesticide, means -

- (a) any written, printed or graphic matter on, or attached to, the pesticide or its immediate container; and
- (b) the outside container or wrapper of the retail package of the pesticide;

**“license”** means a Pesticide Dealer’s License or a Pesticide Applier’s License issued under Part IV;

**“manufacture”**, in relation to a pesticide, means to prepare, compound, formulate, mix, make, or otherwise treat the pesticide with a view to its sale;

**“Ministry”** means the Ministry responsible for pesticides;

**“officer”** means a public officer;

**“permit”** means a Restricted Pesticide Permit issued under regulation 21;

**“pest”** means -

- (a) any vector of human or animal disease; or
- (b) any unwanted species of plants or animals which cause harm during or otherwise interfere with the production, processing, storage, transport or marketing of food, agricultural commodities, wood and wood products, or animal feeds;

**“pesticide”** means a substance or mixture of substances which -

- (a) is used for preventing, destroying or controlling any pest; or
- (b) may be administered to animals for the control of insects, arachnids, or other pests in or on their bodies, and includes -
  - (i) any substance intended for use as a plant

growth regulator, defoliant, desiccant or agent for thinning fruit or preventing the premature fall of fruit;

(ii) any substance applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport;

(iii) any substance declared by the Minister by notice in the Gazette on the advice of the Committee to be a pesticide for purposes of these Regulations;

(c) is also defined in the Agriculture, Forests and Fisheries Ordinance 1959, and generally include products used for pest, weed and disease control in agriculture, horticulture, public health, stored products, wood and wood products, as well as those used on animals to control external pests and on plants to regulate growth or fruit maturity.

**“quality”** means the degree of conformity to established standards;

**“Register”** means the Register of Pesticides kept under regulation 7;

**“Registrar”** means the Registrar of Pesticides appointed under regulation 6;

**“registration”** means the process by which the Committee approves the import, manufacture, packing, repacking, labeling, storage, sale, distribution, application, possession, or use of a pesticide and assigns it a registration number under these regulations;

**“Restricted Pesticide”** has the meaning given under regulation 21;

**“sell”** means to offer or expose for sale or to have in possession for sale;

**“trade name”** means the name under which a pesticide is labelled, registered, and promoted by the person granted registration of the pesticide under these regulations.

## PART II ADMINISTRATION

**3. Pesticides Technical Committee** - (1) There is

established a Pesticides Technical Committee whose composition is set out in regulation 5.

(2) The Committee is responsible for the registration, control, and management of all pesticides in Samoa and all other functions assigned to it under these regulations.

(3) The Committee may, in writing, delegate any of its powers and functions to the Registrar, except this power of delegation and its function of deciding whether to register a pesticide or issue a license or permit.

(4) A member of the Committee who has an interest in the registration of a particular pesticide or the issue of a particular license or permit must not vote on any motion relating to that registration, license, or permit.

(5) Subject to these regulations, the Committee may regulate its own procedures as it thinks fit, including the appointment of technical advisers and temporary members.

(6) The Committee must meet when required by the Minister, the Chairperson of the Committee, or by any two members of the Committee, but in any event must meet not less than 4 times a year.

**4. Functions of the Committee** - The functions of the Committee are as follows -

- (a) to consider and determine an application for registration of a pesticide and direct the Registrar accordingly;
- (b) to consider and determine an application for a license or permit and direct the Registrar accordingly;
- (c) to decide whether exemption from registration or a research permit should be granted;
- (d) to determine the conditions that should be imposed on the grant or renewal of a certificate, license or permit;
- (e) to advise the Minister on the establishment of a national database of pesticide stocks and use;
- (f) to advise the Minister on steps needed to implement the FAO Code of Conduct;
- (g) to advise the Minister on public education and, or awareness in the safe, efficient and prudent use of pesticides and other matters relating to pesticides in Samoa.

**5. Composition of the Committee** - (1) The Committee consists of the following who by virtue of their

designations, are permanent members –

- (a) the Chief Executive Officer of the Ministry, who shall be the Chairperson;
- (b) the Ministry's Assistant Chief Executive Officer of the Division responsible for pesticides;
- (c) the Legal Consultant of the Ministry;
- (d) a representative from the Customs department of the Ministry responsible for Customs;
- (e) a representative from the environment and conservation division of the Ministry responsible natural resources and environment;
- (f) a representative from the Ministry responsible for health;

(2) The Committee may also include the following, who are non-permanent members and can be co-opted as needed –

- (a) a representative from the Samoa Police Service;
- (b) a representative from the Crops Division of the Ministry.

(3) The Committee shall also be comprised of the following persons who are not public officers and can be co-opted as needed, and who in the opinion of the Minister can respectively represent -

- (a) the research or education sector;
- (b) non-governmental organisations which have relevant interest or expertise; and
- (c) commercial dealers in or users of pesticides.

(4) The Registrar is the Secretary of the Committee, but not a member.

(5) A member of the Committee who is not a public officer may resign at any time by notice in writing to the Minister.

(6) The Minister may cancel the membership of a member who is -

- (a) convicted of a crime; or
- (b) found mentally incompetent by a court of law; or
- (c) absent from 2 consecutive Committee meetings without adequate excuse.

(7) Before cancelling a member's membership under subregulation (6), the Minister must give the member written reasons for the proposed cancellation and invite the member's written response.

**6. Registrar of Pesticides** - (1) The Minister shall appoint a suitably qualified person to be the Registrar for the purposes of enforcing these regulations.

(2) The office of the Registrar shall be located at the Ministry's central office.

(3) The duties of the Registrar includes the following:

- (a) be the Secretary to the Committee;
- (b) receive and process applications for registration, exemption, licenses and permits made under these regulations;
- (c) issue certificates, licenses and permits as directed by the Committee, and publish them as required by these regulations;
- (d) collect the fees prescribed under these regulations and pay them into the General Revenue Fund;
- (e) perform all other duties imposed on the Registrar under these regulations;
- (f) do all other things in connection with the implementation of these regulations as are reasonably required of the Registrar by the Minister or by the Committee.

**7. Register of Pesticides** - (1) The Registrar must keep a Register of Pesticides and enter in it –

- (a) the trade name, common name, chemical name and concentration of every registered pesticide; and
- (b) the name, address and other contact details of the registered user; and
- (c) the uses for which the pesticide is registered; and
- (d) a record of all certificates, licenses and permits issued, with details of the holders, the duration and any conditions attached.

(2) The Register is a public record and, subject to regulation 8, must be made available for inspection and copying by members of the public during normal business hours at the Ministry.

(3) If the Minister so directs, on the advice of the Committee under regulation 4(e), the Register may be expanded to constitute a National Pesticides Database, recording all pesticides used in Samoa and stocks currently held.

(4) The Minister may also direct that further information may be required to be on the Register upon advice from the Committee.

**8. Confidential information** - (1) The Committee and Registrar must treat all information contained in an



application for registration of a pesticide as confidential in the first instance, in order to protect the proprietary rights of the manufacturer of the pesticide.

(2) The Committee must establish procedures and rules regarding -

- (a) which information is to remain confidential; and
- (b) how confidential records are to be maintained and stored; and
- (c) who may have access to them.

### **PART III REGISTRATION OF PESTICIDES**

**9. Requirement for registration** - (1) Subject to regulation 10, it is an offence for any person to import, manufacture, pack, repack, label, store, sell, distribute, advertise, apply, possess, or use any pesticide unless the pesticide has been registered under these regulations.

(2) If a pesticide has been registered under these regulations, and conditions have been attached to the registration in respect of the import, manufacture, packing, labelling, storage, sale, distribution, advertising, application, possession or use of the pesticide, it is an offence for any person to do any of those things in breach of the conditions.

**10. Exemption from registration** - (1) In the case of a pesticide or class of pesticides which is intended to be the subject of scientific research or evaluation, the Committee may, upon the application of the person or body intending to conduct the research or evaluation, in writing exempt the pesticide or class of pesticide from the requirement under regulation 9 for registration.

(2) An application for exemption under subregulation (1) must be made to the Committee in the manner approved by the Committee, with such supporting documentation as to the scientific research and evaluation as the Committee requires, and accompanied by the prescribed fee as set out in the Schedule.

(3) If the Committee grants an exemption under subregulation (1) –

- (a) the importation, manufacture, packing, repacking, storage, distribution, application or use of the pesticide or class of pesticides is not permitted, subject to any conditions the Committee attaches to the exemption in

- respect of those activities; and
- (b) notice of the exemption must be published in the Savali and one other newspaper circulating nationally.

**11. Procedure for application for registration** - (1) An application for the registration or re-registration of a pesticide must contain all of the following:

- (a) be made to the Committee in the approved form;
- (b) show that there is a need to use the pesticide to control a particular problem or problems, and that the new pesticide has special advantages (cost or otherwise) over existing control measures;
- (c) provide evidence that the pesticide is effective against the pests, diseases or weeds for which it is to be used;
- (d) show that there is no significant hazard to users, consumers or the environment;
- (e) specify the formulation, trade name, and pesticide active ingredient and concentration of the pesticide;
- (f) specify the proposed containers and labelling of the pesticide;
- (g) specify any other uses to which the pesticide will be put, the intended beneficial effects and any possible harmful effects;
- (h) specify the manner of distribution of the pesticide in Samoa, and the quantities involved;
- (i) if the Committee requires, include a description, photograph, or exempe of the proposed container and labelling;
- (j) provide evidence of overseas registration, particularly in New Zealand, Fiji, Tonga or Australia;
- (k) contain such other information as the Committee reasonably requires;
- (l) be accompanied by the fee prescribed under the Schedule.

(2) Registration of a pesticide does not grant to any person any proprietary right in respect of that pesticide.

(3) If the Committee is satisfied that a pesticide meets the criteria under subregulation (1), the applicant will be issued a certificate, valid for 5 years.

**12. Decision on application for registration** - (1) Upon

receipt of an application for registration or re-registration of a pesticide, the Committee must, within a reasonable time -

- (a) decide to register or re-register the pesticide, with or without conditions; or
- (b) refuse registration of the pesticide, on one or more of the grounds specified in regulation 13(2).

(2) If the Committee decides to register a pesticide without conditions, the Registrar must -

- (a) assign a registration number to the pesticide, or, for re-registration, re-assign the same registration number to the pesticide; and
- (b) enter the pesticide registration number and details in the Register; and
- (c) publish the registration in the Savali and one other newspaper circulating nationally; and
- (d) send a registration or re-registration certificate to the applicant; and
- (e) collect the prescribed registration fee.

(3) If the Committee decides to register a pesticide with conditions in respect of the import, manufacture, packing, labelling, storage, sale, distribution, advertising, application, possession or use of the pesticide, the Registrar must, in addition to the steps required by subregulation (2) -

- (a) record the conditions in the Register; and
- (b) publish the conditions in the Savali and one other newspaper circulating nationally; and
- (c) inform the applicant in writing of the conditions.

**13. Criteria for registration or refusal** - (1) In evaluating an application for the registration of a pesticide, the Committee must consider all of the following-

- (a) environmental factors, including affected non-targeted species;
- (b) potential health hazards from use of the pesticide;
- (c) the proven or probable efficacy of the pesticide;
- (d) the quality of the product;
- (e) the proposed labelling of the pesticide;
- (f) any residues that might remain after use of the pesticide;
- (g) toxicological data;
- (h) MSDS or material safety data sheet.

(2) The Committee may refuse to register a pesticide if the Committee has reason to believe that one or more of the following has occurred -

- (a) the information contained in the application is incomplete, false or misleading in a material particular;
  - (b) the quality of the pesticide is unsatisfactory;
  - (c) the residue of the pesticide is, or the residues of the pesticide are, too persistent, or are toxic when metabolised;
  - (d) the pesticide is not effective, or is phytotoxic;
  - (e) the pesticide is too hazardous to human or animal health or the environment to permit its use;
  - (f) other products are available which are equally or more effective, but are less hazardous;
  - (g) another country with a reputable registration scheme has refused registration of the pesticide;
  - (h) the risks outweigh the benefits under local socio-economic conditions.
- (3) If registration is refused for the reason set out in subregulation (2)(a) -
- (a) the Registrar must notify the applicant in writing of the particulars in which the information is insufficient, and that the application can be supplemented within a specified time; and
  - (b) if the applicant does not supplement the application within the time specified, the application lapses and a new application must be submitted.
- (4) If registration is refused for any other reason, the Registrar must notify the applicant of the reasons for the refusal and invite the applicant's written submissions in response to the refusal.

**14. Change of particulars** - (1) If, in relation to a pesticide which has been registered under these regulations, the original applicant wishes to change -

- (a) the formulation, trade name, pesticide active ingredient or concentration of the pesticide; or
  - (b) the container, labelling or use of the pesticide; or
  - (c) any other material particulars of the certificate,
- the person must apply for a variation of the certificate and the application must be accompanied by the prescribed fee as set out in the Schedule.

(2) If a different person from the original applicant intends to import, manufacture, pack, repack, label, store, sell, distribute, advertise, apply, possess, or use the

pesticide in Samoa, both persons must make a joint application for the certificate to be transferred to the different person.

**15. Cancellation of certificate** - (1) The Committee may cancel a certificate before it becomes invalid if the Committee is satisfied that one or more of the following has occurred –

- (a) the registration of the certificate was secured contrary to these regulations;
- (b) continued registration is undesirable on the grounds of harm to plant, human or animal health, or to the environment;
- (c) the pesticide is no longer effective for its intended use;
- (d) the pesticide has been withdrawn from the market;
- (e) any condition subject to which the certificate was granted was breached by the certificate holder;
- (f) subsequent to the grant of the certificate, the Committee has become aware of new facts or an unforeseen change in circumstances, which require cancellation of the certificate.

(2) Before cancelling a certificate under subregulation (1), the Committee must give the certificate holder 30 days to submit written reasons as to why the certificate should not be cancelled.

(3) If a certificate is cancelled, the Committee must give written directions as to the disposal of any stocks of the pesticide to which it relates and failure by any person to comply with those directions constitutes an offence.

(4) If a certificate is cancelled under this regulation, the Registrar must -

- (a) notify the holder, who must surrender the certificate immediately; and
- (b) give notice of the cancellation in the Savali and one other newspaper circulating nationally, at least one month before it takes effect; and
- (c) amend the Register accordingly.

**16. Submission of new application** - (1) A person whose application for registration of a pesticide has been refused, or whose registration has been cancelled, may at any time, upon payment of the prescribed fee set out in the Schedule, make a fresh application for registration and such application will be treated in all respects as if it were a new application under

regulation 11.

(2) A person who deliberately provides false or misleading information on an application for registration commits an offence, and must not submit an application under this regulation.

#### **PART IV LICENSES AND PERMITS**

**17. Requirement for license** - (1) It is an offence for a person to import, manufacture, pack, repack, label, store, sell, distribute, apply, possess, or use any pesticide except if in accordance with a Pesticide Dealer's license issued under these regulations.

(2) It is an offence for a person to carry on for profit the business of applying pesticides for other persons except in accordance with a Pesticide Applier's License issued under these regulations.

(3) Subregulations (1) and (2) do not apply to a pesticide or class of pesticides which is exempted from registration under regulation 10.

(4) The Registrar may issue a "Me Too" license to other importers, manufacturers, or distributors for the same product provided the other importer, manufacturer or distributor can prove that the pesticide is identical to that already registered.

**18. Procedure for application for a license** - (1) An application for a license, or for the renewal of a license, must be made to the Committee in the manner approved by the Committee and be accompanied by the prescribed fee as set out in the Schedule.

(2) An application for a Pesticide Dealer's License must -

- (a) specify the pesticide or pesticides to which the license will relate; and
- (b) specify the premises to which the license will relate, with measurements, photographs and any other particulars the Committee requires; and
- (c) specify the personnel to be employed, the training that will be given to them, the safety clothing that will be provided, the security procedures that will be adopted, the quantities proposed to be imported, the containers that will be used, and the method of disposal of old stock;

and

- (d) specify the applicant's experience in dealings with pesticides and in wholesale and retail business generally; and
  - (e) contain such other information as is prescribed or as the Committee reasonably requires.
- (3) An application for a Pesticide Applier's License must –
- (a) specify the type of equipment that is to be used and the type of pesticide that is to be applied; and
  - (b) specify the measures that will be taken to minimise harm to neighbouring property during the application of pesticide; and
  - (c) specify the applicant's experience in the application of pesticides and knowledge of pesticides generally; and
  - (d) contain such other information as is prescribed or as the Committee reasonably requires.
- (4) An application for a "Me Too" license must be made to the Committee in the manner approved by the Committee and be accompanied by the prescribed fee as set out in the Schedule.

**19. Decision on application for a license** - (1) Upon receipt of an application under regulation 18, the Committee must, within a reasonable time -

- (a) approve the application, with or without conditions; or
  - (b) refuse the application on one or more of the grounds specified in subregulation (4).
- (2) If the Committee approves a license, it must specify -
- (a) the pesticide or pesticides to which it relates; and
  - (b) in the case of a Pesticide Dealer's License, the activity and premises to which it relates; and
  - (c) in the case of a Pesticide Applier's License, the type of application to which it relates; and
  - (d) any conditions attached to the license; and
  - (e) the period of its validity.
- (3) If the Committee is satisfied that an application meets the criteria from regulation 18, the applicant will be issued a license valid for 1 year.
- (4) The Committee may refuse an application for a license if the Committee has reason to believe -
- (a) that the application relates to a pesticide which

is not currently registered under these regulations;

- (b) that the information contained in the application is insufficient, misleading or false in a material particular;
- (c) in the case of a Pesticide Dealer's License, that –
  - (i) the premises in question are not suitable for the storage of pesticides; or
  - (ii) use of those premises for such storage will endanger human or animal health or the environment; or
  - (iii) the applicant's proposals in respect of security, training, safety equipment, experience and or dealings with pesticides are inadequate;
- (d) in the case of a Pesticide Applier's License, that the applicant is not technically competent to hold a license;
- (e) in either case, that the applicant is not sufficiently aware of the toxicity of the pesticide or the risks involved in using or handling it, or is not equipped to avoid or minimise those risks.

(4) In order to decide whether an applicant is technically competent to hold a license, the Committee may conduct, or cause to be conducted, such tests of knowledge and competence in relation to the pesticide in question as it thinks fit.

- (5) If the Committee grants a license, the Registrar must -
  - (a) assign a number to the license; and
  - (b) enter the license number and details, and any conditions attached to it, in the Register; and
  - (c) publish the license, and any conditions attached to it, in the Savali and one other newspaper circulating nationally; and
  - (d) send the license and a record of any conditions to the applicant; and
  - (e) collect the prescribed fee.

(6) A license granted or renewed under subregulation (5) is valid for 1 year.

(7) If an application is refused under subregulation (4)(b) for insufficient information –

- (a) the Registrar must notify the applicant in writing of the particulars in which the information is insufficient, and that the application may be supplemented within a specified time; and



- (b) if the applicant does not supplement the application within the time specified, the application will lapse and a new application must be submitted.

(8) If the application is rejected for any other reason, the Registrar must notify the applicant of the reasons for the rejection and invite the applicant's written submissions in response to the rejection.

**20. Revocation or suspension of license** - (1) The Committee may revoke or suspend a license if the Committee considers that revocation or suspension is justified because of –

- (a) a breach of any condition on which the license was granted; or
- (b) new facts or an unforeseen change in circumstances that have arisen since the license was issued.

(2) Before revoking or suspending a license under subregulation (1), the Committee must give the person to whom the license was issued 30 days to submit written reasons as to why the license should not be revoked or suspended, as the case may be.

(3) If a license is revoked, the Committee must give the licensee written directions as to the disposal of any stocks of pesticide held by the licensee and failure to comply with those directions will constitute an offence.

(4) If a license is revoked or suspended under this regulation, the Registrar must -

- (a) notify the holder, who must surrender the license immediately; and
- (b) publish details of the revocation or suspension in the Savali and one other newspaper circulating nationally; and
- (c) record the details in the Register; and
- (d) if the license was suspended, return it to the holder at the end of the period of suspension.

**21. Restricted Pesticide Permits** - (1) For the purpose of this regulation, "Restricted Pesticide" means a pesticide that is designated by the Committee as a pesticide that may only be sold to or bought by a person who is the holder of a Restricted Pesticide Permit under this regulation.

(2) It is an offence for a person to sell or buy a Restricted Pesticide unless the seller or buyer is the holder of a

Restricted Pesticide Permit issued by the Committee.

(3) An application for a Restricted Pesticide Permit must be made in the manner approved by the Committee and accompanied by the prescribed fee as set out in the Schedule.

(4) The Committee must only issue a Restricted Pesticide Permit to a person if the Committee is satisfied that the person is a fit and proper person to sell or buy Restricted Pesticides, having regard to the person's age, level of literacy, and awareness of the toxicity of the Restricted Pesticide.

## **PART V DEALING WITH PESTICIDES**

**22. Presentation of pesticides** - (1) It is an offence for a person to pack, repack, store, sell or distribute any pesticide unless it is in a container which meets the following requirements -

- (a) is safe for storage, handling, or use;
- (b) is adequate to prevent the pesticide from causing harm to human or animal health and to the environment;
- (c) is child-resistant;
- (d) is appropriate for the climate conditions of Samoa;
- (e) prominently displays a legible label in accordance with regulation 23;
- (f) otherwise meets any standards for pesticide containers prescribed by these regulations.

(2) If a pesticide is contained in more than 1 container, subregulation (1)(d) -

- (a) does not apply to the container in contact with the pesticide, if the pesticide could not be sold if it were solely contained in that inner container; and
- (b) applies to the container which represents the smallest unit of the pesticide which can be sold separately; and
- (c) applies to a container containing more than one retail unit, if no bill of lading is attached and if a reasonable person would expect such a container to be seen by consumers in Samoa.

**23. Labelling of containers** - (1) All containers containing pesticides shall display a clear and durably

marked label that has the following information, and which cannot easily be detached-

- (a) any one of the words POISON, WARNING, CAUTION, or DANGER, and an appropriate cautionary statement;
- (b) the brand name and percentage by weight of all active chemical ingredients;
- (c) the nature and formulation of the pesticide;
- (d) any restrictions of use, or safety precautions;
- (e) directions for use including the recommended intended uses of the pesticide in Samoa;
- (f) direction as to first aid in case of poisoning or burns, including details of appropriate antidote and its use;
- (g) instructions regarding disposal of empty containers;
- (h) the name and address of the manufacturer or supplier of the pesticide.

(2) All labeling requirements under subregulations (1)(a), (e), (f) and (g) must also appear on the label in the Samoan language.

(3) The Committee may, subject to such conditions as they may impose, waive any or all of the requirements of this regulation if-

- (a) compliance is not practicable but is satisfied that there will be an adequate label fixed before any such pesticide is sold; or
- (b) they are satisfied that the pesticide will be used solely for authorized controlled research purposes.

(4) Six copies of a label to be used on a pesticide container at the point of sale must be supplied except for "Me Too" import licenses whereby only 3 copies of the label are required, 1 copy of which must be signed by the Registrar, attached to the certificate or license to import, and returned to the applicant.

(5) If a label supplied under subregulation (4) is modified, 6 copies of the revised label must be submitted to the Registrar for approval.

**24. Handling and use of pesticides** - (1) An employer who requires or permits an employee to handle a pesticide must provide and require the employee to use any facilities and protective clothing designated by the manufacturer or prescribed under these regulations for the safe handling of the

pesticide.

(2) An employer who requires or permits an employee to work with pesticides during the course of employment must provide the employee with -

- (a) such instruction as is necessary to enable the person to achieve the required standard of competence; and
- (b) such periodic medical check-ups as are prescribed.

(3) It is an offence for any person to use, or require an employee to use, or recommend any other person to use, a pesticide in any manner -

- (a) contrary to these regulations; or
- (b) contrary to instructions provided by the manufacturer of the pesticide; or
- (c) contrary to a condition of a certificate or license relating to that pesticide.

(4) An employer who contravenes subregulations (1) or (2) commits an offence.

(5) The Committee may determine appropriate policies, requirements, and instructions for the handling and use of pesticides and may publish them in a Code of Practice.

**25. Storage of pesticides** - (1) All pesticides must –

- (a) be stored in a dry, well-ventilated environment, away from direct sunlight or heat; and
- (b) not be transferred to containers that previously held consumable, chemical, or hazardous material.

(2) Pesticides purchased for and intended for private use must -

- (a) be stored at least 5 feet off the ground so that they are out of reach of children and pets; and
- (b) be stored in a safe area away from food, animal feed, medical products, protective clothing, seeds, fertilizers, gasoline, and places where flooding is possible, or where they might spill or leak into wells, drains, ground water, or surface water; and
- (c) be used strictly according to the instructions on the label; and
- (d) not be stockpiled; and
- (e) not be stored in application equipment.

(3) All pesticides intended for bulk or commercial storage must be –

- (a) stored in their original containers; and
- (b) locked in a storage facility that has been constructed according to guidelines determined by

the Committee; and

- (c) away from any living areas; and
  - (d) away from food, animal feed, medical products, protective clothing, seeds, fertilizers, gasoline, and places where flooding is possible, or where they might spill or leak into wells, drains, ground water, or surface water; and
  - (e) far away from an ignition source.
- (4) Dry pesticides must be stored above liquid pesticides.

**26. Obsolete pesticides** - (1) An obsolete pesticide must be disposed of in accordance with regulation 27.

(2) Where it cannot be disposed of in a timely manner, an obsolete pesticide must be stored –

- (a) separate from useable pesticides; and
- (b) in a locked, dry, well-ventilated storage facility away from food, animal feed, medical products, protective clothing, seeds, fertilizers, gasoline, and places where flooding is possible, or where they might spill or leak into wells, drains, ground water, or surface water; and
- (c) far away from an ignition source.

**27. Disposal of pesticides** - (1) It is an offence for a person to dispose of any pesticide or pesticide waste in a manner -

- (a) that might harm human or animal health or the environment; or
- (b) contrary to any regulations in that regard.

(2) The Committee may determine appropriate policies, requirements, and instructions for the disposal of pesticides and may publish them in a Code of Practice.

**28. Advertising of pesticides** - (1) It is an offence for a person to advertise any unregistered pesticide or any pesticide in a manner that -

- (a) is false or misleading in any material particular; or
- (b) is intended to deceive; or
- (c) employs false or misleading comparisons with any other pesticide; or
- (d) is contrary to the conditions of registration of the pesticide.

(2) This regulation is in addition to any other prohibition on advertising of pesticides contained in these regulations or any other legislation.

**29. Adulteration** - (1) It is an offence for a person to -

- (a) adulterate a pesticide; or
- (b) store or sell a pesticide which the person has reason to believe may be adulterated.

(2) In this regulation, “adulterate” means one or more of the following -

- (a) to omit or abstract a constituent of a pesticide wholly or in part;
- (b) to conceal damage or inferiority in a pesticide in any manner;
- (c) to substitute a substance in a pesticide wholly or in part;
- (d) to add a substance to, or mix or pack a substance with, a pesticide so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is;
- (e) to cause or permit a constituent of a pesticide to exceed the amount stated on the label or permitted by these regulations;
- (f) in any other way to cause or permit the nature, substance or quality of a pesticide to be injuriously affected.

**30. Record keeping** - (1) A person who imports, manufactures, packs, repacks, labels or sells pesticides, and who stores obsolete pesticides must keep adequate written records of all quantities of pesticides so dealt with and of any other information that may be required by the Committee.

(2) Records kept under subregulation (1) must be made available, upon request, to an authorised officer, an analyst, the Registrar, any member of the Committee, or the Minister.

(3) Records required under this regulation may be kept in electronic form but must be capable of being retrieved for inspection and for use in evidence, if required.

(4) A person who fails to keep records required under this regulation commits an offence.

## **PART VI ENFORCEMENT**

**31. Appointment of authorised officers** - (1) The Minister may, after consultation with the Committee, appoint suitably qualified officers of the Ministry, or, with the concurrence of another Minister, officers of that

other Ministry, to be authorised officers for the purposes of these regulations.

(2) The Registrar is ex officio an authorised officer.

(3) The Ministry must provide an authorised officer with evidence of the appointment that can be carried on the person.

**32. Powers of authorised officers** - (1) Subject to this regulation, for the purpose of ascertaining whether these regulations are complied with, an authorised officer may -

- (a) during normal business hours, enter any premises at which any pesticide is manufactured, packed, repacked, stored, sold, distributed or advertised;
- (b) require any person found in or on the premises and whom the inspector reasonably suspects to have committed a relevant offence, to give to the authorised officer the person's name and address and evidence of identity;
- (c) require the production of, and inspect and copy, any certificate, license, permit, record or other document issued under or kept for the purpose of these regulations;
- (d) take samples of any substance to which these regulations relate and submit them for analysis;
- (e) on the premises, make such examination and inquiry and do such other things, including taking samples of packaging and labels and copies of advertisements, as are reasonably necessary for the purposes of the inspection.

(2) If a Judge is satisfied by information upon oath that there are reasonable grounds for believing that -

- (a) a relevant offence is being or has been committed in any premises; or
- (b) there is or may be in any premises anything which is or contains, or which is likely to be or to contain, evidence of the commission of a relevant offence,

the Judge may issue a warrant authorising an authorised officer to enter and search the premises.

(3) If a warrant has been issued under subregulation (2) in respect of any premises, an authorised officer may -

- (a) at any time, using such reasonable force as is necessary, enter and search the premises; and
- (b) remove anything which obstructs such entry and

search; and

- (c) detain any person found in the premises, for such period as is reasonably required to permit the search to be carried out, if the person might prejudice the search if not so detained; and
- (d) seize any equipment, pesticide, container, document, record, or other thing which the authorised officer reasonably believes to have been used in, or to be or contain evidence of, a relevant offence.

(4) An authorised officer may, in relation to premises other than domestic premises, exercise any of the powers under subregulation (3), without a warrant having been issued under subregulation (2), if –

- (a) the Attorney-General's approval has been obtained; and
- (b) the authorised officer has reason to believe that -
  - (i) a relevant offence is being or has been committed in the premises; or
  - (ii) there is or may be in the premises anything which is or contains, or which is likely to be or to contain, evidence of the commission of a relevant offence; and
- (c) it is not reasonably practicable to obtain a warrant in respect of the premises before exercising those powers.

(5) When exercising the powers under subregulations (1) or (3), an authorised officer must, if so requested by any person, produce for inspection by that person written evidence of the authorised officer's authority.

(6) When seizing anything from a person under subregulation (3)(d), the authorised officer must -

- (a) give a written receipt to the person from whose custody the thing was taken; and
- (b) promptly return the thing to that person once the necessary inquiry or prosecution has been completed, except for unregistered pesticides, which must be destroyed or disposed of in accordance with regulation 27.

(7) A person who does any of the following commits an offence–

- (a) wilfully assaults, delays or obstructs an authorised officer in the exercise of the powers under subregulations (1) or (3);
- (b) fails without reasonable excuse to give any



information which the authorised officer reasonably requires the person to give under subregulation (1).

(8) In this regulation, “relevant offence” means an offence against these regulations, other than this regulation, regulation 30 or regulation 34.

**33. Relationship to other enforcement agencies** - (1) In the performance of his or her duties under these regulations, an authorised officer is entitled to request the assistance of any Customs Officer or Police Officer.

(2) Authorised officers, Customs Officers and Police Officers must report contraventions of these regulations that they deal with to the Committee.

(3) The decision of any court in legal proceedings instituted under these regulations shall prevail over that of any authorised officer or other officer with regard to the disposal of any item seized under regulation 32(3)(d).

**34. Offences relating to documents** - (1) A person who, without the written authority of the Minister or other lawful excuse, discloses to any other person any of the following commits an offence -

- (a) the contents of an application, or any other document which comes into existence for the purposes of these regulations;
- (b) information about the business or activities of any other person which was acquired by the person in the performance of official duties under these regulations.

(2) A person who does any of the following commits an offence -

- (a) gives false or misleading information;
- (b) alters, defaces, or destroys, any application, certificate, license, permit, record or other document which comes into existence for the purposes these regulations.

**35. General penalty** - (1) A person who is convicted of an offence under these regulations is liable to a fine not exceeding 1 penalty units.

(2) A court convicting a person of a relevant offence may, in addition to any other penalty imposed, order anything used in committing the offence, or, if the thing has been sold, the proceeds of the sale, to be forfeited to

the Government.

**36. Proof and presumptions** - In any prosecution under these regulations -

- (a) a copy of or extract from a certificate, license, permit, form or other document made by the Registrar, an authorised officer or any other public officer, and certified by such person to be true and correct shall, unless the contrary is proved -
  - (i) be presumed to be a true and correct copy of the extract; and
  - (ii) on its production in court, be prima facie proof of any matters contained therein;
- (b) if, following an inspection under these regulations, a sample of a pesticide is taken in accordance with these regulations, all other quantities of the pesticide of the same brand or batch at the location inspected shall, unless the contrary is proved, be presumed to be in the same condition and to possess the same properties as the sample;
- (c) any substance, appliance, or other object found in or around any premises where any pesticide is manufactured, packed, repacked, labelled, or sold shall, unless the contrary is proved, be presumed to be used for and in, stored, distributed, applied for profit, possessed, or used in connection with those activities.

## **PART VII ANALYSIS**

**37. Analysts and laboratories** - (1) The Minister may authorise a competent person, in or outside Samoa, to be an analyst for the purposes of these regulations.

(2) The Minister may designate any suitable laboratory, in or outside Samoa, to be a designated laboratory for the purposes of these regulations.

(3) Appointments and designations under this regulation must be published in the Savali.

**38. Taking of samples** - (1) An inspector who takes a sample of a pesticide from premises under regulation 6(b) must -

- (a) divide the pesticide into 3 approximately equal parts; and
- (b) place each part in a separate sealed container and suitably mark or label each container; and
- (c) give to the person in possession of the pesticide, or in occupation of the premises, or a servant or agent of one of them, one of the parts selected by the person, servant or agent; and
- (d) in accordance with any directions of the Registrar, submit one of the remaining 2 parts to an analyst for analysis;
- (e) place the other part in the safe keeping of the Registrar, who must retain it for the purposes of comparison, if necessary.

(2) In the event of a dispute or appeal relating to a sample, the Committee, the Minister, or a court may require any or all of the parts of the sample to be sent to a designated laboratory for analysis to be compared with the result of the initial analysis.

(3) After conducting an analysis of a sample of a pesticide for the purposes of these regulations, the analyst must issue to the Registrar and to the person referred to in subregulation (1)(c) a certificate of analysis stating the result of the analysis, the method used and any other prescribed information.

**39. Certificate of analysis** - (1) A certificate under regulation 38(3) must be signed by the analyst but the analysis may be made by a person acting under the directions of the analyst.

(2) A certificate purporting to have been signed by an analyst for purposes of these regulations shall be presumed, until the contrary is proved, to have been signed by the analyst.

(3) A certificate of analysis of a sample of any matter may be tendered in evidence in any proceedings under these regulations and shall, until the contrary is proved, be sufficient evidence of the facts stated in it if the procedure set out in this regulation and regulation 38 has been complied with, or substantially complied with so far as is reasonably practicable, in relation to that sample.

(4) A request may be made by the Court for the analyst to appear in the proceedings for the purpose of examination.

## PART VIII

## APPEALS

**40. Appeals** - (1) A person aggrieved by a decision of the Registrar, an authorised officer or an analyst under these regulations may appeal to the Committee by notice in writing setting out the grounds.

(2) A person aggrieved by a decision of the Committee under these regulations may appeal to the Minister by notice in writing setting out the grounds.

(3) A person who wishes to appeal a decision made by one of the parties named in subregulations (1) or (2), must serve a notice of appeal to the party they are appealing against and to the party who will hear the appeal.

(4) All appeals must be made within 21 working days of the decision being notified to the applicant.

(5) Once a notice of appeal has been received, the party hearing the appeal must convene within 7 working days and shall provide a decision within 21 working days of being served the notice of appeal.

### **41. Appeal powers of the Committee and Minister -**

(1) For appeal matters, the Committee and Minister are empowered under these regulations to reverse, amend, or refer the matter back to the party being appealed against for reconsideration of the matter.

(2) A decision by the Minister under this regulation shall be final.

## PART IX MISCELLANEOUS

**42. Codes of Practice** - (1) A Code of Practice issued under these regulations must be published in Samoan and English and made readily available to potential handlers and users of pesticides.

(2) Before a Code of Practice comes into effect, notice of it, with a summary of its contents and a statement of where it can be obtained, must be published in the Savali and one other newspaper circulating nationally.

(3) A breach of a Code of Practice issued under these regulations will not constitute an offence, but may be treated as evidence of an offence under these regulations.

(4) Compliance with a Code of Practice issued under these regulations may be treated as constituting a defense to a charge under these regulations.

**43. Liability** - (1) Neither the Minister, Registrar, any member of the Committee, nor any authorised officer, analyst or other person performing duties under these regulations shall be liable for the consequences of anything done or omitted to be done in good faith in the course of the person's duties under these regulations.

(2) No liability is incurred by the Government by reason of a pesticide being or not being registered under these regulations or a person being or not being granted a license or permit in accordance with these regulations.

**44. Repeals** - The Pesticides Regulations 1990 are repealed.

**45. Transitionals** - (1) A pesticide which is lawfully in use in Samoa at the commencement of these regulations is deemed to be registered under these regulations from that date.

(2) A license or permit which, at the commencement of these regulations, was lawfully issued under the repealed regulations and which is equivalent to a license or permit which can be issued under these regulations is deemed to have been issued under these regulations from that date.

(3) Any registration, license or permit deemed to continue by virtue of a notice under subregulation (2) shall lapse at the end of the period specified in the notice unless a new application is submitted under these regulations and the registration approved or the license or permit granted.

(4) All existing appointments under the repealed regulations shall continue accordingly as if made under these regulations.

## SCHEDULE

### **FEES PRESCRIBED UNDER THESE REGULATIONS**

| <b>Item</b> | <b>Regulation</b>                        | <b>Matter for which fee is payable</b>   | <b>Fee Basis</b> | <b>Amount</b>    |
|-------------|--|--|------------------|------------------|
| 1           | regulation 10(2)                         | Application for exemption from registration of a pesticide or class of pesticides        | Certificate      | \$300.00 + VAGST |
| 2           | regulation 11(1)(l);<br>regulation 16(1) | Application for registration or re-registration of a pesticide (renewable every 5 years) | Certificate      | \$300.00 + VAGST |

|   |                  |  |                 |                  |
|---|------------------|--|-----------------|------------------|
| 3 | regulation 14(1) | Application for a variation of the registration certificate                    | Certificate     | \$300.00 + VAGST |
| 4 | regulation 18(1) | Application for a license or for the renewal of a license (renewable annually) | Licence/ Permit | \$200.00 + VAGST |
| 5 | regulation 18(4) | Application for "Me Too" licence   | Licence/ Permit | \$200.00 + VAGST |
| 6 | regulation 21(3) | Restricted Pesticide Permit  | Licence/ Permit | \$200.00 + VAGST |

---