

DRAFT



Government of Samoa

PESTICIDES REGULATIONS 2008

SAMOA

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PURSUANT to the Agriculture, Forests and Fisheries Ordinance 1959, I TUIATUA TUPUA TAMASESE EFI, Head of State, acting on the advice of Cabinet, HEREBY MAKE the following Regulations: -

DATED this _____ day of _____ 2008.

(Tuiatua 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 2007.
- (2) These Regulations shall come into force on the date they are made.
- (3) Notice of commencement shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Interpretation

In these Regulations, unless the context otherwise requires:

“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 appointed as an analyst under regulation, or a person who does analysis at and under the auspices of a designated laboratory;

“Committee” means the Pesticides Technical Committee

“certificate” means a registration certificate issued under regulation.....;

“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 or 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.....;

“FAO Code of Conduct” means 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 (or any amendment thereof);

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

“inspector” means a person appointed as an inspector under regulation

“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;

“licence” means a Pesticide Dealer’s Licence or a Pesticide Applier’s Licence 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;

“Minister” means the [Minister] responsible for the administration of these Regulations;

“Ministry” means the Ministry of the Minister responsible for the administration of these Regulations;

“officer” means a public officer;

“permit” means a Restricted Pesticide Permit issued under regulation [or a Research Permit issued under section ...];

“pest” means –

- (a) any vector of human or animal disease; and
- (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;

[Does not include mechanical devices or antiseptic solutions etc.. ?]

“prescribed” means prescribed by regulations made under **regulation.....**;

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

“Register” means the Register of Pesticides established under **regulation.....**;

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

“registration” means the process by which the Committee approves the import, manufacture, packing, repacking, or labelling of a pesticide and assigns it a registration number under these Regulations;

“Restricted Pesticide” means a pesticide that is designated by the [Minister] by order in the Gazette as a pesticide that may only be sold to or bought by a person who is the holder of a Restricted Pesticide Permit under **regulation.....**;

“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 to be 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 must perform all other functions assigned to it under these Regulations.
- (3) The Committee may in writing delegate any of its functions to the Registrar, except [its function of deciding whether to register a pesticide or issue a licence or permit] and its power of delegation.
- (4) A member of the Committee who has an interest in the registration of a particular pesticide or the issue of a particular licence must not vote on any motion relating to that pesticide or licence.
- (5) Subject to the Interpretation Act, and to these Regulations, the Committee may regulate its own procedures as it thinks fit, including the appointment of technical advisers and temporary members. .

4. *Functions of the Committee*

The functions of the Committee are to -

- (1) Consider and determine every application for registration of a pesticide and direct the Registrar accordingly;
- (2) Consider and determine every application for a licence or permit and/or direct the Registrar accordingly;
- (3) Decide whether exemption from registration [and/or a research permit] should be granted in any particular case;
- (4) Determine the conditions that should be imposed on the grant or renewal of any certificate, licence or permit;
- (5) Advise the Minister on the establishment of a national database of pesticide stocks and use;
- (6) Advise the Minister on steps needed to implement the FAO Code of Conduct;
- (7) Advise the Minister on public education/awareness in the safe, efficient and prudent use of pesticides, and, on all 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, be permanent members -

- (a)
 - (i) the Chief Executive Officer of the Ministry who shall be the Chairman;
 - (ii) the Ministry's Assistant Chief Executive Officer of the Division responsible for Pesticides;
 - (iii) a representative from the Ministry of Revenue from its Customs Department;
 - (iv) a representative of the Ministry of Natural Resources and Environment from its Division of Environment and Conservation;
 - (v) an appropriate representative of the Ministry of Health;
 - (vi) a representative from the Ministry of Police and Prison Services;
 - (b) 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 –
 - (i) the research or education sector;
 - (ii) non-governmental organisations which have relevant interest or expertise; and
 - (iii) commercial dealers in or users of pesticides .
- (2) The Registrar is the Secretary of the Committee [but not a member].

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

(4) The Minister may cancel the membership of a member who –

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

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

6. *Registrar of Pesticides*

(1) There is to be a Registrar of Pesticides.

(2) The duties of the Registrar is inclusive of but not limited to–

- (a) act as Secretary to the Committee [and head the Secretariat to the Committee];
- (b) receive and process applications for registration, exemption, licences and permits under these Regulations;
- (c) issue certificates, licences and permits as directed by the Committee, and publish them as required by the Regulations;
- (d) collect fees as prescribed by or under these Regulations and pay them into general revenue;
- (e) perform all other duties imposed on the Registrar by or 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, subject to regulation....., enter in it –

- (a) the trade name, common name, chemical name and concentration of every registered pesticide;
- (b) the name, address and other contact details of the registered user;
- (c) the uses for which the pesticide is registered;

- (d) a record of all certificates, licences 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, upon payment of the prescribed fee.
- (3) If the Minister so directs, on the advice of the Committee, the Register may be expanded to constitute a National Pesticides Database, recording all pesticides coming into and used in Samoa and stocks currently held.

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;
 - (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....., it is an offence for any person to import, manufacture, pack, repack, label, store, sell, distribute, advertise, apply, possess, or use any pesticide in Samoa unless the pesticide has been registered in accordance with 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 those conditions.

10. *Exemption from registration*

- (1) In the case of a pesticide or class of pesticide 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 for registration.

(2) An application for exemption under sub-regulation (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, if any.

(3) If the Committee exempts from registration any pesticide or class of pesticides under this section, the importation, manufacture, packing, repacking, storage, distribution, application and use of the pesticide or class of pesticide is permitted, subject to any conditions the Committee attaches to the exemption in respect of those activities.

(4) If the Committee grants an exemption under sub-regulation (1), notice of the exemption must be published in the Gazette and in a newspaper circulating nationally.

11. *Procedure for application for registration*

- (1) An application for the registration or re-registration of a pesticide must -
- (a) be made to the Committee in the prescribed manner;
 - (b) specify the formulation, trade name, pesticide active ingredient and
 - (c) concentration of the pesticide;
 - (d) specify the proposed containers and labelling of the pesticide;
 - (e) specify the uses to which the pesticide will be put, the intended beneficial effects and any possible harmful effects;
 - (f) specify the manner of distribution of the pesticide in Samoa, and the probable quantities involved;
 - (g) if the Committee requires, include a description, photograph, or exemplar of the proposed container and labelling;
 - (h) contain such other information as is prescribed or as the Committee reasonably requires;
 - (i) be accompanied by the prescribed fee.

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

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;
- (b) refuse registration of the pesticide, on one or more of the grounds specified in regulation 13.

(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;
- (b) enter the pesticide in the Register;
- (c) publish the registration in the Gazette and in a newspaper circulating nationally;
- (d) send a certificate of registration or re-registration 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 sub-regulation (2) -

- (a) record the conditions in the Register;
- (b) publish the conditions in the Gazette and in a newspaper circulating nationally [and by means of an on-line medium ?]; and
- (c) inform the applicant in writing of the conditions.

(4) The registration or re-registration of a pesticide is valid for the period specified in the registration.

13. *Criteria for registration and refusal*

(1) In evaluating an application for registration of a pesticide, the Committee must consider -

- (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; and
- (f) any residues that might remain after use of the pesticide.

(2) The Committee may refuse to register a pesticide if the Committee has reason to believe that -

- (a) the information contained in the application is incomplete or false in a material respect;
- (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; or
- (h) the risks outweigh the benefits under local socio-economic conditions.

(3) If registration is refused for the reason set out in sub-regulation (2)(a) -

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

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;
- (b) the container, labelling or use of the pesticide; or
- (c) any other material particulars of the registration certificate,

the person must apply for a variation of the registration [as if it were a new application ?]

[(2) If a different person than the original applicant intends to import, manufacture, pack, repack, or label the pesticide, both persons must make a joint application for the registration to be transferred to that person.]

15. *Cancellation of registration*

(1) The Committee may cancel a certificate of registration of a pesticide if the Committee is satisfied that -

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

(2) Before cancelling a certificate under sub-regulation (1), the Committee must give the holder of the certificate 60 days to submit written reasons as to why the registration 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 will constitute an offence.

(4) If a certificate is cancelled under this section, the Registrar must –

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

16. *Submission of new application*

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, 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.

PART IV – **LICENCES AND PERMITS**

17. *Requirement for licence*

- (1) It is an offence for a person to manufacture, pack, repack, label, store, sell or distribute any pesticide except if/when registered under and in accordance with a Pesticide Dealer's licence.
- (2) It is an offence for a person to carry on for profit the business of applying pesticides for other persons except under and in accordance with a Pesticide Applier's Licence.
- (3) Sub-regulations (1) and (2) do not apply to a pesticide or class of pesticide which is exempted from registration under regulation 10.

18. *Procedure for application for a licence*

- (1) An application for a licence, or for renewal of a licence, must be made to the Committee in the manner approved by the Committee and be accompanied by the prescribed fee.
- (2) An application for a Pesticide Dealer's Licence must –
 - (a) specify the pesticide or pesticides to which the licence will relate;
 - (b) specify the premises to which the licence will relate, with measurements, photographs and any other particulars the Committee requires;
 - (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 which it is proposed to import, the containers that will be used, the method of disposal of old stock [etc.];
 - (d) specify the applicant's experience in dealings with pesticides and in wholesale and retail business generally.
 - (e) contain such other information as is prescribed or as the Committee reasonably requires.
- (3) An application for a Pesticide Applier's Licence must –

- (a) specify the type of equipment that is to be used and the type of pesticide that is to be applied;
- (b) specify the measures that will be taken to minimise harm to neighbouring property during the application of pesticide;
- (c) specify the applicant's experience in the application of pesticides and knowledge of pesticides generally.
- (d) contain such other information as is prescribed or as the Committee reasonably requires.

19. *Decision on application for a licence*

(1) Upon receipt of an application under regulation....., 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 sub-regulation (3).

(2) If the Committee approves a licence, it must specify –

- (a) the pesticide or pesticides to which it relates;
- (b) in the case of a Pesticide Dealer's Licence, the activity and premises to which it relates;
- (c) in the case of a Pesticide Applier's Licence, the type of application to which it relates;
- (d) any conditions attached to the licence; and
- (e) the period of its validity.

(3) The Committee may refuse an application for a licence if the Committee has reason to believe -

- (a) that the application relates to a pesticide which is not currently registered under the Regulations;
- (b) that the information contained in the application is insufficient or false in a material respect;
- (c) in the case of a Pesticide Dealer's Licence, that the premises in question are not suitable for the storage of pesticides, or use of those premises for such storage will endanger human or animal health or the environment, or the

- applicant's proposals in respect of security, training, safety equipment [etc.] are inadequate;
- (d) in the case of a Pesticide Applier's Licence, that the applicant is not technically competent to hold a licence;
- (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.
- (3) In order to decide whether an applicant is technically competent to hold a licence, 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.
- (4) If the Committee grants a licence, the Registrar must -
- (a) assign a number to the licence;
 - (b) enter the licence, and any conditions attached to it, in the Register;
 - (c) publish the licence, and any conditions attached to it, in a newspaper circulating nationally;
 - (d) send the licence and a record of any conditions to the applicant; and
 - (e) collect the prescribed fee.
- [(5) A licence granted or renewed under sub-regulation (4) is valid for 1 year.]
- (6) If an application is refused for the reason set out in sub-regulation (2)(b) -
- (a) the Registrar must notify the applicant in writing of the respects in which the information is insufficient, and that the application may be supplemented within a specified time;
 - (b) if the applicant does not supplement the application within the time specified, the application will lapse and a new application must be submitted.
- (7) 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.

20. *Revocation or suspension of licence*

- (1) The Committee may revoke or suspend a licence if the Committee considers that revocation or suspension, as the case may be, is justified because of -

- (a) a breach of any condition on which the licence was granted;
 - (b) new facts or an unforeseen change in circumstances that have arisen since the licence was issued.
- (2) Before revoking or suspending a licence under sub-regulation (1), the Committee must give the person to whom the licence was issued [30] days to submit written reasons as to why the licence should not be revoked or suspended, as the case may be.
- (3) If a licence is revoked, the Committee must give the holder 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 licence is revoked or suspended under this section, the Registrar must –
 - (a) notify the holder, who must surrender the licence forthwith;
 - (b) publish details of the revocation or suspension in a newspaper circulating nationally;
 - (c) record the details in the Register; and
 - (d) if the licence was suspended, return it to the holder at the end of the period of suspension.

21. *Restricted Pesticide Permits*

- (1) It is an offence for a person to sell or buy a Restricted Pesticide unless the buyer is the holder of a Restricted Pesticide Permit issued by the Committee.
- (2) An application for a Restricted Pesticide Permit may be made in the manner approved by the Committee and accompanied by the prescribed fee.
- (3) 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 buy restricted pesticides, having regard to the person's age, level of literacy and awareness of the toxicity of the restricted pesticide.

PART V – **DEALINGS 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 –
 - (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) prominently displays a legible label containing [wording which has been approved by the Committee and which cannot easily be detached;
 - (d) otherwise meets any standards for pesticide containers prescribed by the regulations.
- (2) If a pesticide is contained in more than one container, sub-regulation (1)(c) -
 - (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;
 - (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.
- (3) The Committee may determine appropriate policies, requirements, and instructions for the labelling and presentation of pesticides and may publish them in a Code of Practice.

23. *Handling and use of pesticides*

- (1) An employer who requires or permits an employee to handle a pesticide must -
 - (a) provide; and
 - (b) require the employee to use,
any facilities and protective clothing designated by the manufacturer or prescribed under these Regulations for the safe handling of that 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 –
 - (a) use;
 - (b) require an employee to use; or
 - (c) recommend any other person to use,

a pesticide in any manner –

- (i) contrary to these Regulations in that regard;
 - (ii) contrary to instructions provided by the manufacturer of the pesticide;
- or

- (iii) contrary to a condition of a certificate or licence relating to that pesticide.

(4) An employer who contravenes sub-regulations (1), (2) or (3) 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.

24. *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.

25. *Advertising of pesticides*

(1) It is an offence for a person to advertise -

- (a) any unregistered pesticide;
- (b) any pesticide in a manner that -
 - (i) is false or misleading in any material particular;
 - (ii) is intended to deceive;
 - (iii) employs false or misleading comparisons with any other pesticide; or
 - (iv) is contrary to the conditions of registration of the pesticide.

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

26. *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 section, “adulterate” means -
- (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 the regulations;
 - [(f) in any other way to cause or permit the nature, substance or quality of a pesticide to be injuriously affected.]

27. Record keeping

- (1) A person who imports, manufactures, packs, repacks, labels or sells pesticides must keep adequate written records of all quantities of pesticides so dealt with and of any other information that may be prescribed.
- (2) Records kept in accordance with sub-regulation (1) must be made available, upon request, to an inspector, an analyst, the Registrar, any member of the Committee, or the Minister.
- (3) Records required by or under this section 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 as required by or under this section commits an offence.

PART VIII – **ENFORCEMENT**

28. Appointment of inspectors

- (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 inspectors for the purposes of these Regulations.

- (2) The Registrar is *ex officio* an inspector.
- (3) A person authorised as an inspector must be provided with evidence of the appointment that can be carried on the person.

29. Powers of inspectors

(1) For the purpose of ascertaining whether the provisions of these Regulations are being complied with, an inspector 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 inspector the person's name and address and evidence of identity;
- (c) require the production of, and inspect and copy, any certificate, licence, permit, record or other document issued under or kept for the purposes 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 authorizing any inspector to enter and search the premises.

(3) If a warrant has been issued under sub-regulation (2) in respect of any premises, an inspector may –

- (a) at any time, using such **reasonable** force as is necessary, enter and search the premises;
 - (b) remove anything which obstructs such entry and search;
 - (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 inspector reasonably believes to have been used in, or to be or contain evidence of, **a relevant** offence.
- (4) An inspector may in relation to premises other than domestic premises exercise any of the powers mentioned in sub-regulation (3), without a warrant having been issued under sub-regulation (2), if -
- (a) the inspector 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
 - (b) it is not reasonably practicable to obtain a warrant in respect of the premises before exercising those powers.
- (5) When exercising any of the powers conferred by sub-regulations (1) or (3), an inspector must, if so requested by any person, produce for inspection by that person written evidence of the inspector's authority.
- (6) When taking any thing from a person in exercise of the powers under sub-regulation (3)(d), an inspector 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 and/or prosecution has been completed, except for unregistered pesticides, which must be destroyed or disposed of in the manner directed by the Committee or prescribed by a **Code of Practise**.
- (7) A person who –

- (a) wilfully assaults, delays or obstructs an inspector in the exercise of the powers conferred by sub-regulations (1) or (3); or
- (b) fails without reasonable excuse to give any information which the inspector reasonably requires the person to give under sub-regulation (1),

commits an offence and is liable on conviction to a fine not exceeding x penalty units and to imprisonment for a terms not exceeding 24months.

(8) In this section, “relevant offence” means an offence against any provision of these Regulations, other than this regulation, regulation [27] or regulation [31].

30. Relationship to other enforcement agencies

- (1) In the performance of his or her duties under these Regulations, an inspector is entitled to request the assistance of [any Customs Officer or Police Officer] .
- (2) Inspectors, Customs Officers [and Police Officers] are responsible for reporting contraventions of these Regulations to the Committee.
- (3) The decision of any court in legal proceedings instituted under these Regulations shall prevail over that of any inspector or other officer with regard to the disposal of any item seized under regulation [29(3)(d)].

31. Offences relating to documents

- (1) A person who, without the written authority of the Minister or other lawful excuse, discloses to any other person -
 - (a) the contents of an application, or any other document which comes into existence for the purposes of these Regulations; or
 - (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, commits an offence.
- (2) A person who –
 - (a) gives false information on; or
 - (b) alters, defaces, or destroys,

any application, certificate, licence, permit, record or other document which comes into existence for the purposes these Regulations, commits an offence.

32. Penalties

- (1) A person convicted of an offence under regulation [26] is liable -
 - (a) on a first conviction to a fine not exceeding x penalty units and to a term of imprisonment for a term not exceeding x months];
 - (b) on a second or subsequent conviction to a fine not exceeding x penalty units and to a term of imprisonment for a term not exceeding x months].
- (2) A person convicted of any other offence against these Regulation, other than regulation 29(7), is liable -
 - (a) on a first conviction to a fine not exceeding x penalty units and to a term of imprisonment not exceeding 12 months;
 - (b) on a second or subsequent conviction to a fine not exceeding x penalty units and to a term of imprisonment not exceeding 24 months.
- (3) A court convicting a person of a relevant offence may, in addition to any other penalty imposed, order any thing used in committing the offence, or, if the thing has been sold, the proceeds of the sale, to be forfeited to the State.
- (4) Notwithstanding any provision to the contrary in any other law, a District Court is competent to impose any penalty or to make any order provided for in this section.

33. Proof and presumptions

In any prosecution under these Regulations -

- (a) a copy of or extract from a certificate, licence, permit, form or other document made by the Registrar, an inspector 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 or extract; and
 - (ii) on its production in court be prima facie proof of any matters contained in it;
- (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, sold, stored, distributed, applied for profit, possessed, or used shall, unless the contrary is proved, be presumed to be used for and in connection with those activities.

PART VII – **ANALYSIS**

34. *Analysts and laboratories*

- (1) The Minister may authorise any competent person, in or outside Samoa, to be an analyst for 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 section must be published in the Gazette.

35. *Taking of samples* *Do we need this?*

- (1) An inspector who takes a sample of a pesticide from premises under regulation [29(1)(d)] must –
- (a) divide it into 3 approximately equal parts;
 - (b) place each part in a separate sealed container and suitably mark or label each container;
 - (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;
 - (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 purposes of these Regulations, whether under sub-regulation (1)(d) or (2), the analyst must issue to the Registrar and to the person referred to in sub-regulation (1)(c) a certificate of analysis stating the result of the analysis, the method used and any other prescribed information.

36. *Certificate of analysis*

(1) A certificate under regulation [36(1)] 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 section and regulation [36] has been complied with, or substantially complied with so far as is reasonably practicable, in relation to that sample.

PART VIII **– APPEALS**

37. *Appeals*

(1) A person aggrieved by a decision of the Registrar, an inspector or an analyst under these Regulations may appeal to the Committee [in the prescribed manner][by notice in writing setting out the grounds etc.]. Which option?

(2) A person aggrieved by a decision of the Committee under these Regulations may appeal to the Minister [in the prescribed manner][by notice in writing setting out the grounds etc.]. Which option?

(3) [Time-limit for appeals ? Service of notice on Registrar, Committee etc. ?]

(4) [Duty of Committee or Minister to hear from both sides and to act judicially.]

(5) [What Committee or Minister can do – Reverse or amend decision ? Send it back for reconsideration ?]

(6) A decision of the Minister under this section shall be final.

PART IX –
MISCELLANEOUS

38. Codes of Practice *What is the purpose of this? Is it necessary?*

- (1) A Code of Practice issued under these Regulations is not subsidiary legislation and does not require approval of the legislature.
- (2) Every Code of Practice must be published in Samoan as well as English and made readily available to potential handlers and users of pesticides.
- (3) 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 a newspaper circulating nationally, on the national radio or television [and on the website of the Ministry].
- (4) If a Code of Practice is published under any section of these Regulations –
 - (a) a breach of the Code will not constitute an offence, but may be treated as evidence of an offence under the Regulations;
 - (b) compliance with the Code may be treated as constituting a defence to a charge under the Regulations.
- (5) [Same applies to FAO Code of Conduct ?]

39. Liability

- (1) Neither the Minister, the Registrar, any member of the Committee, nor any inspector, 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 licence or permit.

40. Repeals

The Pesticides Regulations 1990 are repealed.

41. Transitional provisions/Savings

- (1) The Minister, on the advice of the Committee, may by notice in the Gazette -
 - (a) declare any pesticide which is lawfully in use in Samoa at the commencement of these Regulations and which is specified in the notice to be deemed to be registered under these Regulations;

- (b) declare any licence or permit which was lawfully issued under the repealed Regulations and which is equivalent to a licence or permit which can be issued under these Regulations to have been issued under these Regulations.

(2) Any registration, licence or permit deemed to continue by virtue of a notice under sub-regulation (1) 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 licence or permit granted.

[Alternatively:

(1) Any 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) Any licence or permit which was lawfully issued under the repealed Regulations and which is equivalent to a licence or permit which can be issued under these Regulations is deemed to have been issued under these Regulations from that date.]

(3) [Existing appointments etc.]