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**Proposal to
Amend Virgin Islands Pesticide Control Program
Rules and Regulations
Title 12, Chapter 19, Subchapter 803**



**GOVERNMENT OF THE US VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION**

JUNE 25, 2021

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Pursuant to the authority granted to the Commissioner of the Department of Planning and Natural Resources in Sections 803(c)(5) and 832 of the Virgin Islands Pesticide Control Act, 12 V.I.C. Chapter 19, and Sections 401(a)(6) and 401(b)(16) of Title 3, Chapter 22 of the Virgin Islands Code, 3 V.I.C. 402, the Commissioner proposes to amend the rules and regulations promulgated in Title 12, Chapter 19, Subchapter 803, 12 CVIR-019-0000, Subchapter 803 to read as follows:

RULES AND REGULATIONS RELATING TO THE APPLICATION OF PESTICIDES

(Statutory authority: Virgin Islands Pesticide Control Act, V.I. Code Ann. Tit 12, §§ 803(c) (5) and 832)

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GENERAL PROVISIONS

803-1 Scope and Purpose

This subchapter describes requirements related to the use of pesticides, including their distribution,

registration, sale, purchase, transportation, application and use. It implements the Pesticide Control Act, 12 V.I.C. § 801 *et seq.*

803-2 Definitions

Words used in the singular form in this chapter shall include the plural, and vice versa, as the case may require. Words defined in the Act but not defined below shall have the meaning given them in the Act.

“Act” means the Virgin Islands Pesticide Control Act, 12 V.I.C. § 801 *et seq.*

“Active ingredient” means:

(A) In the case of a pesticide other than a plant regulator, defoliant or desiccant, or nitrogen stabilizer an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

(B) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or their produce.

(C) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(D) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue; and

(E) In the case of a nitrogen stabilizer, an ingredient which will prevent or hinder the process of nitrification, denitrification, ammonia volatilization, or increase production through action affecting soil bacteria.

“Agency” means any department or division of the Government of the Virgin Islands, including the University of the Virgin Islands, or of the Government of the United States.

“Agent” means any person who acts on behalf of another person, government, or other official body.

“Agricultural commodity” means any plant, fungus or algae, or part thereof, or any animal or animal product, produced by a person (including, farmers, ranchers, vineyardists, plant propagators, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation or other use by humans or animals.

“Antimicrobial agent” means

- (A) disinfectants intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects;
- (B) sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces, in water, or in air;
- (C) bacteriostats intended to inhibit the growth of bacteria in the presence of moisture;
- (D) sterilizers intended to destroy viruses and all living bacteria, fungi and their spores, on inanimate surfaces;
- (E) fungicides and fungistats intended to inhibit the growth of, or destroy, fungi (including yeasts), pathogenic to humans or other animals on inanimate surfaces; and
- (F) commodity preservatives and protectants intended to inhibit the growth of, or destroy bacteria in or on raw materials (such as adhesives and plastics) used in manufacturing, or manufactured products (such as fuel, textiles, lubricants, and paints), but not those utilized in the pulp and paper process or cooling towers.

“Application” or “applying” in reference to a pesticide means the dispersal of a pesticide on, in, at, or directed toward a target site.

“Basement” means the area below the main floor of a structure that is five feet or greater in height, as measured from the ground to the underside of the floor, and is contained either wholly or in part by a foundation.

“Business registration” means the registration of Pesticide Businesses required by section 803-38.

“Calibration” means a measurement of dispersal or output of application equipment and adjustment of such equipment to establish a specific rate of dispersal, and, if applicable, droplet or particle size of a pesticide, and/or equalized dispersal pattern.

“Certification” means the authorization by the Department pursuant to sections 803-32 through 35 for an individual to use or supervise the use of restricted use pesticides.

“Certification card” means the card the Department provides pursuant to section 803-32 through 35 to individuals who are Certified Applicators. The Act refers to this card as an “identification card.”

“Certified Applicator” means any person who is certified as a Commercial or Private Applicator pursuant to sections 803-32 through 35 to use or supervise the use of restricted use pesticides.

“CFR” means the Code of Federal Regulations.

“Cistern” means a reservoir used for the collection and storage of water, and constructed either wholly or partially underground, including those constructed in a manner that shares part of the foundation in its construction. A stone-filled well with a capacity of less than 60 gallons or a septic or sewerage system is not considered a cistern for the purpose of these regulations.

“Commercial Application” in reference to general use pesticides means any application of a general use pesticide

- (a) made for compensation on property neither owned nor leased by the applicator or the applicator’s employer, regardless of whether the pesticide application is the sole service provided or whether it is one of several services provided, or
- (b) made on property owned or leased by the applicator or the applicator’s employer where the property is two and a half acres or larger and the property is used for commercial purposes or is the location of a business.

Notwithstanding the preceding sentence, “Commercial Application of general use pesticides” does not include Private or Residential Applications of general use pesticides as those terms are defined herein, the application of antimicrobial agents that are not restricted use pesticides, or the application of horticultural soap and oils that do not contain synthetic pesticides or synergists and are not restricted use pesticides.

“Commercial Applicator” means an individual who is certified pursuant to section 803-32 to 35 by the Department as a Commercial Applicator to use or supervise the use of restricted use pesticides.

“Commercial lawn application” means the application for hire of restricted use pesticides or general use pesticides to ground, trees, or shrubs on property neither owned by nor leased to the person making the application or to the applicator’s employer. The following shall not be considered commercial lawn application:

- (A) the application of pesticide for the purpose of producing an agricultural commodity; and
- (B) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control.

“Commissioner” means the Commissioner of the Department of Planning and Natural Resources or his or her designee.

“Competency” means having the practical knowledge, skills, experience, and judgment necessary to perform functions associated with restricted use pesticide application without causing unreasonable adverse effects, where the nature and degree of competency required relate directly to the nature of the activity and the degree of independent responsibility

“Crawl space” means the area below the main floor of a structure that is less than five feet in height, as measured from the ground to the underside of the floor, and is contained wither wholly or in part by a foundation.

“Department” means the Department of Planning and Natural Resources.

“Department-supplied form” is a hard-copy or electronic form provided by the Department. The Department may by policy or guidance require that all forms and accompanying documents be submitted electronically in a manner to be specified by the Department.

“Device” means an instrument or contrivance, other than a firearm, that is intended to trap, destroy, repel, or mitigate a pest or other form of plant or animal life (other than humans and other than bacteria, virus, or other microorganism on or in living humans or living animals. The term does not include equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately from a pesticide.

“Distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. The term does not include the holding or application of registered pesticides or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served

“EPA” means the United States Environmental Protection Agency.

“Establishment” means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

“Excavation or treated backfill technique” means application of termiticide in the following manner: trench and remove soil to be treated onto heavy plastic sheeting or similar material, or into a wheelbarrow or other device which prevents introduction of termiticide to the environment;

(A) treat excavated soil according to label directions. Mix termiticide dilution thoroughly into the soil in such a manner that termiticide runoff or spillage does not occur; and

(B) after treated soil has completely absorbed the termiticide dilution, replace treated soil in the trench.

“FIFRA” means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.), as amended.

“Fumigant” means a restricted use pesticide that bears labeling designating it as a fumigant.

“Fumigation” means the use of a fumigant.

“General use pesticide” means a pesticide which does not meet the criteria for a restricted use pesticide under these regulations.

“Immediate family” means familial relationships limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. “First cousin” means the child of a parent’s sibling, *i.e.* the child of an aunt or uncle.

“Label” means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.

“Labeling” shall incorporate the federal definition at 40 C.F.R. § 156.10(a) through (i) and means all labels and all other written, printed, or graphic matter:

(A) Accompanying the pesticide (including on the pesticides, any of its containers or wrappers) or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the United States Environmental Protection Agency, the United States Departments of Agriculture, of Interior, and of Health and Human Services, state agricultural experiment stations, state colleges of agriculture, and other similar federal, Virgin Islands or other state institutions or agencies authorized by law to conduct research in the field of pesticides.

“Mishap” means an event that adversely affects humans or the environment and that is related to the use or presence of a pesticide, whether the event was unexpected or intentional.

“Misuse” means to use a registered pesticide in a manner inconsistent with the labeling.

“Nontarget organism” means any plant, animal or other organism other than the target pests that a pesticide is intended to affect.

“Ornamental” means trees, shrubs, flowers, and other plantings intended primarily for aesthetic purposes in and around habitations, buildings and surrounding grounds, including residences, parks, streets, and commercial, industrial, and institutional buildings.

“Person” means any individual, organization, partnership, association, fiduciary, corporation, or other entity, including any utility, the Government of the Virgin Islands, the Government of the United States, any department, agency, board, authority, or commission of such governments, any office or governing body of the foregoing, or any organized group of persons whether incorporated or not.

“Personal protective equipment” means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

“Pesticide” means

- (A) a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest,
- (B) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and
- (C) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 321(w) of Title 21 of the U.S. Code, that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 321(x) of Title 21 of the U.S. Code bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 321 of Title 21. For purposes of the preceding sentence, the term “critical device” includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body..

"Pesticide Agency" means any agency that has employees who apply restricted use pesticides to:

- (A) property neither owned nor rented by the government; or
- (B) residences.

"Pesticide Business" means any person applying restricted use pesticides for hire or providing Commercial Application of general use pesticides, including any person providing commercial lawn applications. It includes businesses offering, providing or advertising the services of application of restricted use pesticides or Commercial Application of general use pesticides, including commercial lawn applications. Individuals who apply pesticides for their employers are not themselves a Pesticide Business.

"Pesticide Dealer" means a person with a valid Pesticide Dealer Permit issued by the Commissioner pursuant to section 803-21 that allows the person to sell restricted use pesticides.

"Pesticide Dealer Permit" means the Pesticide Dealer Permit issued by the Commissioner pursuant to section 803-21 that allows the dealer to sell restricted use pesticides. It is the "commercial permit" required by 12 V.I.C. § 823.

"Pesticide use" and "use of pesticide" include applying, transporting and storing a pesticide.

"Practical knowledge" means possession of pertinent facts and comprehension sufficient to properly perform functions associated with the use of restricted use pesticides, including properly responding to reasonably foreseeable problems and situations.

"Private Application" means the application of general use pesticides:

- (A) on property owned or leased by the applicator or the applicator's employer, provided that:
 - a. the property is not used for commercial purposes or as a business location, or
 - b. the property is less than two and half acres in size; or
- (B) if applied without compensation, on the property of others.

“Private Applicator” means an individual who is certified under 803-34 and 35 to use or supervise the use of any restricted use pesticide for purposes of producing any agricultural commodity on:

(A) property owned or rented by him or his employer, or,

(B) if applied without compensation other than trading on personal services between producers of agricultural commodities, on the property of another person.

“Purchase Permit” means a permit issued by the Department pursuant to section 803-22 that allows the holder to purchase specified restricted use pesticides.

“Registrant” means any person who has registered a pesticide under these regulations.

“Residential Application” means the application of general use pesticides in the residence of the individual making such application.

“Reduced pressure zone device” means a minimum of two independently active check valves, together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two check valves must be less than the upstream (supply) pressure. In case of leakage of either check valve, the differential relief valve must operate to maintain the pressure between the check valves at less than the upstream (supply) pressure by discharging to the atmosphere. The unit must include tightly closing shutoff valves located at each end of the device and each device must be fitted with properly located test cocks.

“Restricted use pesticide” means any pesticide or pesticide use classified by the Commissioner under the provisions of these regulations for use by Certified Applicators or persons working under their direct supervision, and any pesticide or pesticide use so classified by the EPA.

“Rodding” means the subsurface ground application of termiticide by means of the insertion of hollow tubes through which the termiticide is delivered.

“Subsurface ground application” means the placement of any liquid termiticide below grade or underneath a slab by rodding, trenching, excavation/treated backfill technique, or other means. Note: Presence of termiticide may appear at grade as the result of subsurface ground application.

“Technician” or “Pesticide Technician” means any person who is not certified in accordance with these regulations to use or supervise the use of restricted use pesticides in the category appropriate to the type of application being conducted, but who is using restricted use pesticides under the direct supervision of a person certified as a Commercial Applicator.

“Three rinse technique” means that after normal emptying, the container is allowed to drain in a vertical position for 30 seconds. The container is rinsed three times with water or the pesticide carrier being used, allowing 30 seconds for draining after each rinse. Rinse material should be easily measurable. Use one quart for each rinse of a one-gallon can or jug, a gallon for each five-gallon can and five gallons for either 30- or 55-gallon drums. Drain each into the spray tank before filling it to the desired level or drain into suitable containers for use as a diluent for future formulations of the same pesticide.

“Toxicity” means the property of a pesticide that refers to the degree to which the pesticide, and its degradates and metabolites, are able to cause an adverse physiological effect on an organism.

“Trenching” means the subsurface ground application of termiticide by means of the excavation of a narrow ditch and application of termiticide into the ditch or to the excavated soil as it is being replaced.

“Under the direct supervision of” means working under the supervision of a Certified Applicator in compliance with sections 803-51 and 52.

“Use-specific instructions” means the information and requirements specific to a particular pesticide product or worksite that a user needs in order to use the pesticide in accordance with applicable requirements and without causing unreasonable adverse effects.

“Weed” means any plant that grows where not wanted.

“Worker Protection Standard” means the federal worker protection standard as found in the Code of Federal Regulations, 40 C.F.R. Parts 156 and 170.

803-3. Requirements for the Use of Pesticides

- (a) Pesticides must be used in such a manner and under such wind and other conditions as to prevent contamination of people, pets, fish, wildlife, crops, property, structures, lands, pasturage or waters adjacent to the area of use.
- (b) Pesticides are to be used only in accordance with label and labeling directions, and as modified and approved by the Department.
- (c) All equipment containing pesticides and drawing water from any water source shall have an effective anti-siphon device to prevent back-flow. An anti-siphon device means the use of a backflow prevention device that uses a reduced pressure zone device or an air gap separation between a water source and the overflow of a receptacle (e.g., spray tank, mixing tank, dipping vat, etc.) containing pesticides, to prevent contaminated water from siphoning back into a water supply.

(d) During pesticide use by or under the supervision of a Certified Applicator, the person applying the pesticide must have in his or her custody a copy of the label for each pesticide being used. The applicator must make each label available for inspection upon request of the Department and to the residents of the property where application is occurring.

(1) Prior to the application of a restricted use pesticide or a Commercial Application of a general use pesticide within or on the premises of a dwelling occupied by one or two families, the Commercial Applicator shall supply the occupants therein with a written copy of the information, including any warnings, contained on the label of the pesticide to be applied.

(2) Prior to the application of a restricted use pesticide or a Commercial Application of a general use pesticide within or on the premises of a multiple dwelling, building or structure other than a dwelling, the Certified Applicator shall supply the owner or his agent with a written copy of the information, including all warnings, contained on the label of the pesticide to be applied. The owner or agent shall make available upon request at reasonable times such information to the occupants or residents of such multiple dwelling, building, or structure.

(3) Prior to the application of restricted use pesticides or a Commercial Application of a general use pesticides within a multiple dwelling unit, in addition to meeting the requirements of paragraph (d)(2), the Commercial Applicator shall supply to the unit's occupants any information, including all warnings, contained on the label of the pesticides.

(4) For purposes of this subsection:

(A) "Dwelling" means any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one or more families.

(B) "Multiple dwelling" means any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other.

(C) "Multiple dwelling unit" means that portion of a multiple family dwelling occupied by one or more persons as the residence or home of such persons.

(D) "Premises" means land and improvements or appurtenances or any part thereof.

803-4. Exemptions

(a) The provisions of this subchapter do not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide within the Virgin Islands, if

such carrier shall, upon request, permit the Commissioner or his designee to copy all records showing the transactions in and the movement of the pesticides;

(2) The manufacturer or shipper of a pesticide for experimental use only:

(A) By or under the supervision of an agency of the Government of the Virgin Islands or of the federal government authorized by law to conduct research in the field of pesticides and which has a valid experimental use permit issued by the Commissioner, or

(B) By others having a valid experimental use permit issued by the Commissioner if the pesticide is not sold and if the container thereof is plainly and conspicuously marked 'For experimental use only-Not to be sold,' together with the manufacturer's name and address. However, if such a written permit has been obtained from the Commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

(b) An article is not in violation of this subchapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all of the provisions of this subchapter shall apply.

(c) Notwithstanding any other provision of this subchapter, registration is not required in the case of a pesticide shipped from one plant within the Virgin Islands to another plant within the Virgin Islands operated by the same person.

803-5. Inflation Adjustment for Fees and Proof of Financial Responsibility

The Department shall periodically set and publicly release revised fee amounts for all fees established in this subchapter, including sections 803-12(e), 803-17(f), 803-21(b), 803-21(e)(2), 803-32(c), 803-32(e), 803-34(d), 803-38(b), and 803-38(h), and for the minimum limits to demonstrate financial responsibility set forth in section 803-32(e) and 803-38(h). Advance notice and an opportunity for a public hearing are not required if the revised fee amounts or revised minimum limits for financial responsibility merely incorporate an inflation adjustment using the most recent U.S. Virgin Islands Consumer Price Index (CPI) released by the Virgin Islands Division of Economic Research (or successor agency), or, if the USVI CPI is not available for the relevant time period, the U.S. Consumer Price Index released by the U.S. Bureau of Labor Statistics (or successor agency).

803-6. Effective Date and Compliance Dates

(a) These rules and regulations shall become effective on the date that the Department publishes a notice in at least one newspaper of general circulation that says these rules and regulations

have been finalized, have been approved by the Governor and are in effect. Except as provided in subsections (b) – (k) below or elsewhere in these regulations, the provisions of these regulations must be complied with no later than the effective date of these regulations.

- (b) For any pesticide product registration in effect on the effective date of these regulations, its expiration date shall not be affected by these regulations providing the registrant pays the fee specified in this subsection. Ninety (90) days after the effective date of these regulations, for each registration for which a registration fee was not paid, the registrant shall pay a fee of \$35 for each month between the effective date of these regulations and the registration's expiration date. The Commissioner may revoke or cancel the registration for any product for which this fee is not paid. The Commissioner shall not re-register or renew a product's registration under section 803-11 through 19 until this fee is paid for that product.
- (c) Purchase Permits issued before the effective date of these rules and regulations remain valid after the effective date of these regulations. The provisions of 803-21 must be complied with starting one year after the effective date of these regulations.
- (d) Certification and training for commercial and private pesticide applicators – As of October 1, 2024 pesticide applicator certifications under the old program become invalid unless the pesticide applicator is certified under the new program.
- (e) Pesticide technicians – New supervisory and training requirements for pesticide technicians become effective on October 1, 2024.
- (f) The provisions of section 803-38 must be complied with starting one year after the effective date of these regulations.
- (g) **[Reserved for the compliance date for provisions of section 803-61].**
- (h) The provisions of section 803-62 must be complied with starting two years after the effective date of these regulations.
- (i) Record keeping and reporting requirements become effective on October 1, 2024.
- (j) Minimum age requirements (at least 18 years old) for becoming a commercial applicator or certified private applicator or Pesticide Technician (except Pesticide Technicians under section 803-51(b)) become effective 90 days after the effective date of these regulations
- (k) The following requirements become effective on October 1, 2024:
 - a. Addition of new categories for commercial and private applicators

- b. Written exam standards and training requirements
- c. Reciprocity
- d. New recertification requirements.

DIVISION 1. PESTICIDE PRODUCT REGISTRATION

803-11. Pesticide Registration

Every pesticide that is used within the Virgin Islands, distributed or sold within the Virgin Islands, or delivered for transportation shall be registered by the Commissioner prior to its use, distribution, sale or delivery for transportation within the Virgin Islands. All registrations are valid for two years and must be renewed every two years with the Commissioner. Every version of a pesticide product, including each registration number, each supplemental registration, each brand or trade name, each formulation, each mixture, experimental use permits, FIFRA Section 24(c) Special Local Need registrations and FIFRA Section 18 Emergency exemptions must be registered.

803-12. Application for Pesticide Product Registration

- (a) In the manner prescribed by the Department, an applicant must submit a separate application for each of the following types of registrations:
- (1) A pesticide product with an active ingredient which has not been previously registered by the Commissioner;
 - (2) A product previously registered by the Commissioner which has undergone a major change in labeling, including but not limited to, product name change, EPA registration number, directions for use, or a change in ownership of the pesticide product;
 - (3) A pesticide product containing an active ingredient previously registered by the Commissioner and that does not involve a major change in labeling;
 - (4) A product previously registered by the Commissioner which has undergone a change in labeling that is not a major change;
 - (5) Renewals of registration;
 - (6) Minimum-risk pesticides under FIFRA § 25

- (7) Special local need registrations; and
 - (8) A product labeled under an experimental use permit issued by an agency of the United States Government.
- (b) Each application package should clearly identify the registration type listed in subsection (a), and include all required documentation and information required for the type of registration.
- (c) The applicant must submit in the format and manner prescribed by the Department, the following information and forms with all types of registration applications:
- (1) A completed registration form for each different pesticide product to be registered;
 - (2) The name and address of the applicant, the name and address of the applicant's authorized agent (if one has been designated), and the name and address of any other person whose name will appear on the labeling;
 - (3) Verification that the applicant is the official representative of the pesticide product being sold;
 - (4) The name of the pesticide, the trade name(s) (if different), the EPA registration number, if currently registered, and a request that the pesticide be classified as a general use or restricted use pesticide or both;
 - (5) The applicant's company producer establishment number and company number, if they have been assigned;
 - (6) A complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use, and an EPA approved labeling. EPA approved labeling consists of an EPA stamped "accepted" label including any comment letter from EPA, letter of amendment via notification or EPA policy notice; and
 - (7) If requested by the Commissioner, a full description of the tests made and their results upon which the claims are based. In the case of a registration of a pesticide that has been registered for the previous year, a statement shall be required only with respect to information which is different from that furnished when the pesticide was last registered.
- (d) An applicant shall be deemed to have met the application submission requirements of subsection (c), 803-13 and 803-17 by filing an Accepted Labels State Tracking and Repository (ALSTAR) or paper application for registration with the Virgin Islands with the National Pesticide Information Retrieval System (NPIRS) or other similar, national computerized

pesticide application system approved by the Department, and by providing any of the information listed in (c) that is requested by the Department.

- (e) Each applicant is required to pay a registration fee of \$400 biannually, as adjusted for inflation by the Department pursuant to section 803-5, for each pesticide product which has been registered. A registration fee of \$50, as adjusted for inflation by the Department pursuant to section 803-5, is required for each modification of an existing registration other than at renewal. The registration fee is due to the Department within fifteen days of receipt of an acceptance notification of registration from the Department. The registration process is not complete until the applicant has paid the requisite registration fee.

803-13 Additional Requirements for Registrations Involving a Major Change in Labeling

In addition to the information required for registration in section 803-12, the applicant must submit the following information for a new pesticide product for which a major change in use pattern is proposed for an active ingredient contained in a product currently registered by the Commissioner, or for a major change in labeling of a pesticide product currently registered by the Commissioner:

- (a) a statement identifying the pesticide product as involving a major change in labeling as well as a description of the major change in labeling, including relevant information on product efficacy, product composition, container composition or design, or other characteristics
- (b) a copy of data summary reports for all studies relating to the change;
- (c) a copy of the EPA approved label and final printed label;
- (d) a copy of the draft labeling incorporating the proposed labeling changes. If the proposed labeling changes affect only a portion of the labeling, such as the use directions, the applicant may submit that portion of the labeling which is the subject of the changes.
- (e) a copy of the Safety Data Sheet (SDS); and
- (f) any other data, supporting information or EPA review documents which the Department determines are relevant to the pending application.

803-14 Special Local Need Registrations

In addition to the information required in section 803-12, applications to register a federally registered product for a special local need must provide the following information:

- (a) proposed label or supplemental labeling;
- (b) EPA application for notification of State registration of a pesticide to meet a special local need on the appropriate Federal form;
- (c) the following data supporting the proposed use:
 - (1) efficacy data;
 - (2) crop residue data, if the use is a food or feed use and involves an additional crop, or if there is a change in application to a food or feed crop that could result in increased crop residues;
 - (3) human health effects and toxicology data, if the use involves a change in use pattern or could result in increased exposure to humans;
 - (4) environmental fate data, if the use involves a change in use pattern, or if the proposed use represents a significant increase in the dosage rate for an existing federally labeled use; and
 - (5) data on impacts to nontarget organisms, if there is a change in use pattern to one involving outdoor use or if the use could result in increased exposure to nontarget organisms; and
- (d) a detailed justification of the special local need including:
 - (1) a discussion of why existing federally registered products will not meet the need; and
 - (2) a discussion of the nature of the Territorial or local need that cannot be met by an EPA registration.

803-15 Experimental Use Products

- (a) All experimental use pesticide products whose use is authorized by an experimental use permit (EUP) issued by the EPA or required to be issued by EPA must be registered with the Department in accordance with section 803-12. Such registration is required whether the product is sold or given free to cooperators.
- (b) Experimental products not requiring the issuance of a Federal experimental use permit under EPA criteria specified in Federal regulations are not required to be registered. However, the following conditions apply:
 - (1) For experimental programs conducted on property owned or managed by registrants or recognized research institutions, no permit or notification requirements apply.

- (2) For experimental programs conducted on property other than that owned or managed by registrants or recognized research institutions, the person proposing to conduct the program must notify the Department with the details of the program at least thirty (30) days prior to the date of the proposed application.
- (c) In addition to the requirements of section 803-12, an applicant for registration of an experimental use product must provide the following information:
 - (1) a copy of the Federal permit including the experimental label;
 - (2) a copy of the proposed experimental program for the Territory including amounts and acreage of use, name, address, and phone number of the person supervising the program in the Territory and a list of cooperators;
 - (3) if requested by the Department, a summary of the public outreach plan the registrant intends to follow; and
 - (4) data summaries of toxicology, environmental toxicology, and environmental fate data for the active ingredient, if such data has not already been submitted to the department.
- (d) The department must be notified a minimum of five business days in advance of application of EUP pesticides of any changes in the list of cooperators previously approved.
- (e) Notwithstanding any other provision in these regulations, the Commissioner may exempt from the requirement for experimental use permits those substances (or mixtures of substances) in early research stages, such as those being put through laboratory or greenhouse tests or limited scale field trials or other tests for the purpose of determining pesticide value and from which the user does not expect to receive any benefit in pest control.

803-16 Registration Application Review Process

- (a) The Department will review all product registration applications and filings for completeness. Within 60 days after an application for registration is filed with the Department, the Commissioner shall determine whether the application is complete, and then the Commissioner shall notify the applicant in writing of the determination. If the Commissioner does not issue its determination on completeness within 60 days of receipt of an application for registration, the application is deemed complete by operation of law. If the Commissioner determines that an application or filing is incomplete, the Commissioner shall include a statement of the reasons for the determination in the written notice. The resubmission or submission of additional information shall commence a new review of the application's completeness.

- (b) Upon determination that an application is complete, the Department will initiate a review of the application, which may include an evaluation of the potential for adverse impacts to human health and the environment which may occur when the product performs its intended function and is used in accordance with the label directions. As part of this evaluation, the Department will consider the potential for human health and ecological risks as well as the potential benefits that could accrue from the use of the product. The Department shall consider whether the composition of the pesticide is such as to warrant the claims for it, and whether the pesticide and its labeling (including packaging) and other materials required to be submitted comply with the requirements of this chapter.
- (c) Upon completion of the review, the Commissioner will issue or deny the registration, or approve or disapprove amended labeling, within the following periods, calculated from the date of the completeness determination:
 - (1) 150 days for an application for an active ingredient not previously registered by the Commissioner or a major change in labeling;
 - (2) 90 days for an application with previously registered active ingredient and without a major change in labeling;
 - (3) 60 days for an application for a special local need;
 - (4) 30 days for amended labeling not involving a major change in labeling;
 - (5) 45 days for minimum risk pesticides; or
 - (6) 60 days for experimental use permit (EUP) product applications.
- (d) The Commissioner may place any conditions on the registration of any product that are deemed necessary to prevent damage or injury to health, property and wildlife. Conditions may include, but are not limited to:
 - (1) the submission of additional data;
 - (2) classification as restricted use;
 - (3) recordkeeping or reporting requirements;
 - (4) prescription of or limitations on the method of application, including the time, place, manner and method of application and the equipment used;

- (5) restrictions or prohibitions on the use of materials in designated areas during specified periods of time; and
 - (6) any other use conditions deemed necessary.
- (e) Compliance with the conditions of registration is required for the continued registration of the pesticide.
- (f) If registration or approval of amended labeling is not granted or denied within the prescribed time period, the applicant may submit a request to grant or deny the registration, by means of certified mail, return receipt requested, addressed to the Commissioner of the Department of Planning and Natural Resources: Director, Division of Environmental Protection at the then current address of the Department of the Department of Planning and Natural Resources. If the registration is not granted or denied within thirty (30) days following the receipt of such request, the registration shall be deemed granted, except that for applications involving a special local need, the application will be deemed granted if a decision is not issued within ten (10) days. Any denial of registration or disapproval of amended labeling will specify the grounds for denial.
- (g) Any time period specified in this section may be extended with the consent of the applicant.
- (h) At any time during the review of an application to register a pesticide, the Commissioner may request reasonable additional information from the applicant with regard to any matter contained in the application when such additional information is necessary for the Commissioner to make a decision on the registration application. A request does not extend any time period within which a registration decision must be made.

803-17 Pesticide Product Registration Renewals

- (a) Applicants for renewal must file an application with the Department in the manner specified by the Department at least sixty (60) days prior to the registration expiration date of the pesticide product, as shown on the registration certificate.
- (b) The applicant will be notified of incomplete applications and given adequate opportunity to provide the information to complete the application.
- (c) If a renewal application was completed and filed with the Department on or before the expiration date of the existing registration, the pesticide product registration will continue in effect until a registration renewal decision is issued and takes effect. If a renewal application is not complete by the expiration date, then the registration will expire on the stated expiration date.

- (d) Special local need registrations can be renewed only if the Department determines that the special local need continues to exist.
- (e) Experimental products can only be renewed if the Federal experimental use permit is currently in effect.
- (f) Each applicant is required to pay a registration fee of \$400 biannually per registration, as adjusted for inflation by the Department pursuant to section 803-5, for the renewal of each pesticide product registration. This registration fee will be increased by \$100, as adjusted for inflation by the Department pursuant to section 803-5, for each product for which an applicant fails to file a complete renewal application with the Department at least sixty (60) days prior to the product's registration expiration date as shown on the registration certificate of the pesticide product. The registration fee is due to the Department within fifteen days of receipt of an acceptance notification of registration renewal from the Department. The registration renewal process is not complete until the applicant has paid the requisite registration fee.

803-18 Emergency Exemptions From Registration Requirements

- (a) Any person may file a written petition requesting that the Commissioner apply to EPA for an emergency exemption from FIFRA to allow the use of a pesticide for which FIFRA requires registration but which has not been registered under FIFRA for the intended use.
- (b) The petition must be filed with the Department at least one hundred (100) days before the date on which the use is proposed to commence and must include the following information:
 - (1) identity of contact persons;
 - (2) description of the pesticide;
 - (3) description of the proposed use;
 - (4) alternative methods of control;
 - (5) effectiveness of proposed use versus alternative methods of control;
 - (6) discussion of residues for food uses;
 - (7) discussion of risk information;

- (8) coordination with other affected State or Federal agencies;
 - (9) notification of registrant or basic manufacturer;
 - (10) description of proposed enforcement program; and
 - (11) information on repeated use.
- (c) Within thirty (30) days of the Department's receipt of the petition, the Commissioner shall inform the petitioner whether the petition and supporting materials are adequate to support an application for an emergency exemption.
- (d) If a petition is deemed adequate by the Commissioner, the Commissioner shall submit an emergency exemption application to the EPA at least sixty (60) days prior to the date on which use is proposed to commence. Within ten (10) days of notice from EPA regarding final action on such application, the Department shall notify the petitioner of EPA's action.
- (e) The Commissioner has the authority to submit an application for an emergency exemption to EPA without being petitioned to do so.

803-19. Registration Decisions

- (a) If it appears to the Commissioner that the composition of the pesticide is such as to warrant the proposed claims for it, and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this chapter, the Commissioner shall register the pesticide.
- (b) If the Commissioner determines that the pesticide does not warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of the Act, the Commissioner shall notify the applicant for registration that the application does not comply with the requirements of the Act, explain the deficiencies and afford the applicant an opportunity to make the necessary corrections.
- (1) If upon receipt of such notice, the applicant for registration does not make the corrections, the Commissioner shall refuse to register the pesticide and shall notify the applicant of that action and the reasons for the refusal.
 - (2) Within thirty (30) days of service of the notice of refusal, the applicant may file a petition with the Commissioner requesting that the matter be referred to an advisory committee or may file objections and request a public hearing in accordance with the provisions of sections 817 and 818 of the Act, 3 V.I.C. §§ 817 and 818.

803-20. Cancellation and Suspension of Registration**(a) Cancellation of Registration:**

- (1) The Commissioner, in accordance with the procedures specified in the Act, may cancel the registration of a pesticide whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of the Act or these regulations.
- (2) Whenever the Commissioner determines that registration of a pesticide should be cancelled, he shall notify the registrant of his action and the reasons therefore.
- (3) A cancellation of registration is effective thirty (30) days after service of the foregoing notice unless within such time the registrant:
 - (A) Makes the necessary corrections;
 - (B) Files a petition requesting that the matter be referred to an advisory committee established pursuant to the section 817 of the Act, 3 V.I.C. § 817; or
 - (C) Files objections and requests a public hearing.

- (b) Suspension of Registration: Notwithstanding any other provision of these regulations, the Commissioner may, by order, suspend the registration of a pesticide immediately when he finds that such action is necessary to prevent an imminent hazard to the public or any other nontarget organism. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under sections 817 and 818 of the Act. 3 V.I.C. § 817 and 818.

DIVISION 2. SALE AND PURCHASE OF RESTRICTED USE PESTICIDES**803-21. Pesticide Dealer Permits and Restrictions**

- (a) No person other than a Pesticide Dealer may purchase or possess for the purpose of re-sale, or distribute or sell, any restricted use pesticide.
- (b) To become a Pesticide Dealer, a person must hold a valid Pesticide Dealer Permit from the Department. To obtain a Pesticide Dealer Permit, a person shall file an application with the Commissioner in the manner prescribed by the Department and with such supporting documentation, information, statements or certifications as the Department shall require. All applications shall be accompanied by a \$165 application fee, adjusted for inflation by the Department pursuant to section 803-5. A Pesticide Dealer must be or employ an individual

who is a Commercial Applicator.

- (c) A separate application, application fee and Pesticide Dealer Permit is required for each location in the Virgin Islands.
- (d) All Pesticide Dealer Permits shall expire on December 31st of each year and be valid until the latter of December 31st or the date that the Commissioner takes final action on a renewal request that was completed and filed no later than December 31st.
- (e) Each Pesticide Dealer shall apply to renew its Pesticide Dealer Permit before the expiration of the existing Pesticide Dealer Permit.
 - (1) Said application shall be in the manner prescribed by the Department and with such supporting documentation, information, statements or certifications as the Department shall require, including payment of the permit renewal fee.
 - (2) The permit renewal fee is \$165 for a complete renewal application filed within sixty (60) days prior to the expiration date of the permit, except that the fee is an additional of \$35, as adjusted for inflation by the Department pursuant to section 803-5, when a registration renewal application is filed less sixty (60) days prior to the expiration date of the permit.
- (f) Upon receipt of a complete application and payment of the required fee for a new or renewed Pesticide Dealer Permit, the Commissioner shall either
 - (1) Grant the application and issue the requested Pesticide Dealer Permit and impose whatever restrictions or conditions on the permit the Commissioner deems appropriate and necessary to protect public health and the environment; or
 - (2) Deny the application and refuse to issue the requested Pesticide Dealer Permit.
- (g) The Commissioner may deny an application for a new or renewed Pesticide Dealer Permit, or at any time after giving due notice, revoke an existing Pesticide Dealer Permit. The reasons for such a denial or revocation may include but are not limited to:
 - (1) A false or misleading statement in the application for the permit (including in accompanying supporting documentation, information, statements or certifications);
 - (2) The applicant's failure to provide the documentation, information, statements or certification required by the Commissioner or failure to pay the requisite application fee;

- (3) The applicant's or Pesticide Dealer's lack of adequate facilities for the proper storage and distribution of restricted use pesticides;
 - (4) Fraudulent business practices by the applicant or Pesticide Dealer relating to the sale and distribution of pesticides;
 - (5) The applicant's or Pesticide Dealer's failure to comply with any provision of the Act or these Rules and Regulations;
 - (6) The applicant's or Pesticide Dealer's lack of a valid and current Virgin Islands Business License pursuant to 27 V.I.C. § 301 *et seq.*; and
 - (7) The applicant's or Pesticide Dealer's failure to demonstrate sufficient knowledge and experience concerning the proper use and application of pesticides.
- (h) A formal hearing shall not be required for the denial or revocation of a Pesticide Dealer Permit and the Commissioner's decision to deny or revoke a permit shall be final unless the applicant or permit holder institutes a petition for of review within the time and manner prescribed by title five, chapter ninety-seven of the Code.
- (i) A Pesticide Dealer shall not sell restricted use pesticides except to:
- (1) another Pesticide Dealer,
 - (2) a holder of a Purchase Permit, or
 - (3) a Certified Applicator who presents his or her certification card.
- (j) Upon the sale by a Pesticide Dealer of a restricted use pesticide for which a Purchase Permit is required, the Pesticide Dealer shall cancel the Purchase Permit as follows or as otherwise directed in guidance issued by the Department;
- (1) Each Pesticide Dealer selling restricted use pesticides to a Purchase Permit holder shall, at the time of each sale, record the date, type of restricted use pesticide, quantity purchased and purchase price on the sales invoice and on the back of the Purchase Permit.
 - (2) The Pesticide Dealer who makes the last sale that completes the total amount of the restricted use pesticide authorized by a Purchase Permit shall, in addition to recording the required information on the sales invoice and on the back of the Purchase Permit as set forth above, retain a copy of the Purchase Permit.

- (k) Upon the sale by a Pesticide Dealer of a restricted use pesticide for which a Purchase Permit is not required, and for sales to certified Private Applicators of general use pesticides used in agricultural crop production, the Pesticide Dealer shall, at the time of each sale, provide to the purchaser and keep for the dealer, a record that includes:
- (1) the name and address of the residence or principal place of business of the Certified Applicator to whom the pesticide was sold,
 - (2) the certification number on the certification card presented to the seller, the expiration date of the Certified Applicator's certification, and the category(ies) in which the applicator is certified relevant to the pesticide sold; and
 - (3) the date of the sale,
 - (4) the product name and EPA registration number of the restricted use pesticide, including any applicable emergency exemption or special local need registration number,
 - (5) the quantity purchased, and
 - (6) for sales to Private Applicators, the location of the intended application (including five-digit zip code) or the billing address if such location is unknown.
- (l) Pesticide Dealers must comply with the recordkeeping and reporting requirements in 803-81.

803-22. Purchase Permits and Restrictions

- (a) No person other than a Pesticide Dealer or Certified Applicator, or someone acting under a Certified Applicator's supervision in compliance with sections 803-51 and 52, or an agricultural handler acting on behalf of a Private Applicator in compliance with EPA's Worker Protection Standard may possess, or use restricted use pesticides without first applying for and obtaining a Purchase Permit.
- (b) To obtain a Purchase Permit, a person shall file an application in the manner prescribed by the Department and with such supporting documentation, information, statements or certifications as the Commissioner shall require. The Commissioner shall not issue a Purchase Permit except to a person authorized to apply restricted use pesticides without a certification pursuant to section 803-31(b)(5) or (6).
- (c) Each application for a Purchase Permit shall be filed at least fifteen (15) business days before the intended purchase date, unless, based on the circumstances and at his sole discretion, the Commissioner allows for the application to be filed within a different timeframe.

(d) Upon receipt of an application for a Purchase Permit, the Commissioner shall either:

(1) Issue the requested Purchase Permit and impose whatever restrictions or conditions on the permit the Commissioner deems appropriate and necessary to protect public health and the environment; or

(2) Refuse to issue the requested Purchase Permit.

(e) The Commissioner may deny an application for a Purchase Permit or, at any time after giving due notice, revoke an existing Purchase Permit. The reasons for such a denial or revocation include but are not limited to:

(1) The availability of a less dangerous alternative pesticide capable of performing the task required for which the Purchase Permit is sought;

(2) A false or misleading statement in the permit application (including accompanying supporting documentation, information, statements or certifications) for the permit;

(3) The applicant's failure to provide the documentation, information, statements or certification required by the Commissioner;

(4) The applicant's or permit holder's failure to justify the need for the requested quantity and types of restricted use pesticides;

(5) The applicant's or permit holder's storage, application, use or disposal of any pesticide contrary to the registered labeled usage or contrary to the conditions specified in the permit;

(6) The applicant's or permit holder's failure to comply with any provision of the Act or these Rules and Regulations; and

(7) The applicant's or permit holder's failure to demonstrate sufficient knowledge and experience concerning the proper use and application of pesticides.

(f) A formal hearing shall not be required for the denial or revocation of a Purchase Permit and the Commissioner's decision to deny or revoke a Purchase Permit shall be final unless the applicant or permit holder institutes a petition for writ of review within the time and manner prescribed by title five, chapter ninety-seven of the Virgin Islands Code.

(g) Upon the purchase by a Purchase Permit holder of a restricted use pesticide, he or she shall present his Purchase Permit to the Commercial Permit holder selling the restricted use pesticide and have the Purchase Permit cancelled by the commercial permit holder in the manner

prescribed in Section 803-21 .

- (h) The statutory requirement to have a Purchase Permit to purchase, possess or use restricted use pesticides is waived for Certified Applicators because they must comply with recordkeeping and reporting requirements in section 803-81.

DIVISION 3. APPLICATOR CERTIFICATION AND BUSINESS REGISTRATION

803-31. Activities for Which Pesticide Applicator Certification Is Required

- (a) A person may not engage in the Commercial Application of general use pesticides, or the distribution, sale or application of restricted use pesticides, unless that person is a Certified Applicator and possesses, on their person, a valid certification card issued by the Department and makes such certification card available upon request of the Department.
- (b) Notwithstanding subsection (a) and (e), certification is not required for:
 - (1) A person using general use or restricted use pesticides under the direct supervision of a Certified Applicator in compliance with sections 803-51 and 52;
 - (2) a person who is a handler employee using restricted use pesticides under the supervision of a Private Applicator in compliance with EPA's Worker Protection Standard;
 - (3) a person selling restricted use pesticides, provided that the individual is employed by a Pesticide Dealer with a valid Pesticide Dealer Permit pursuant to section 803-21;
 - (4) a person using general use aquatic pesticides in a surface body of water which lies exclusively on said person's property and has no outflow to any surface waters of the Territory.
 - (5) doctors of medicine and doctors of veterinary medicine, licensed to practice within the U.S. Virgin Islands, when applying restricted use pesticides to patients during the course of the ordinary practice of those professions; or
 - (6) persons conducting laboratory research involving restricted use pesticides.
- (c) No Commercial Applicator shall engage in any application of restricted use pesticides or any Commercial Application of general use pesticides for which certification is required except for those categories or subcategories specified on his or her certification card (except as provided for by 803-51 and 52 when working under the supervision of another Commercial Applicator).

- (d) A Private Applicator is authorized to engage in the application of restricted use pesticides solely for the purpose of producing an agricultural commodity on property owned or rented by him or his employer or, if done without compensation other than trading on person services between producers of agricultural commodities, on the property of another person. Certification as a Private Applicator does not authorize other applications of restricted use pesticides or Commercial Application of general use pesticides (except as provided for by 803-51 and 52 when working under the supervision of a Commercial Applicator).
- (e) Except as provided for in subsection b(4), no person shall engage in the use of general use aquatic pesticides in a surface body of water, unless that person is a certified applicator and possesses, on their person, a valid certification card issued by the Department and makes such certification card available upon request of the Department.

803-32. Requirements to Become a Certified Applicator

(a) Commercial Applicator. To become a Commercial Applicator, an individual must:

- (1) be at least 18 years old at the time of application for certification;
- (2) demonstrate competency in the core standards for the use and handling of pesticides by:
 - (A) attending a Department-approved Commercial Applicator certification training course on the core standards; and
 - (B) passing a Department-approved Commercial Applicator certification examination on the core standards;
- (3) demonstrate competency in the standards for the use and handling of pesticides for at least one category or subcategory for the commercial application of pesticides as listed in 803-42 by:
 - (A) attending a Department-approved commercial applicator certification training course for that category or subcategory, and
 - (B) passing a Department-approved commercial applicator certification examination for that category or subcategory;
- (4) submit a complete Department-supplied form for commercial pesticide applicator certification, including requisite accompanying documentation;
- (5) pay the certification fees specified in subsection (c); and

(6) satisfy the Act's financial responsibility requirements as set forth in subsection (e).

(b) Private Applicator. To become a certified Private Applicator, an individual must:

(1) be at least 18 years old at the time of application for certification;

(2) demonstrate competency in the core standards for the use and handling of pesticides, and in the application of pesticides for the purpose of producing agricultural commodities by:

(A) attending a Department-approved private applicator certification training course, and

(B) passing a Department-approved private applicator certification examination;

(3) submit a complete Department-approved form for private pesticide applicator certification, including requisite documentation; and

(4) pay the certification fees specified in subsection (c).

(c) The certification fees are:

(1) \$80 for a commercial applicator certification, regardless of the number of categories covered by the certification, as adjusted for inflation by the Department pursuant to section 803-5; and

(2) \$80 for private applicator certification, as adjusted for inflation by the Department pursuant to section 803-5.

(d) Pursuant to section 803-36, the Commissioner may waive all or part of the training, examination and certification requirements in subsections (a) and (b) for applicators who are certified by jurisdictions other than the Virgin Islands.

(e) Financial Responsibility. Commercial Applicators must provide proof that the Pesticide Business which they own or are employed by carries commercial general liability insurance on a "per occurrence" basis with a minimum limit of not less than one million dollars (\$1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage, or a surety bond of comparable value, issued by a company licensed to do business in the U.S. Virgin Islands and in a form acceptable to the Department, as proof of financial responsibility. The minimum limit amounts may be adjusted for inflation by the Department pursuant to section 803-5. The

insurance policy shall name the Government of the Virgin Islands as the certificate holder. Commercial Applicators employed by an agency of the Government of the United States, and not by a Pesticide Business, do not need to provide proof of financial responsibility.

803-33. Examination Requirements for Pesticide Applicators

- (a) All applicants for commercial pesticide applicator certification shall be required to pass two separate Department-approved commercial application examinations: the core examination, and a category or subcategory examination which must be specific to the commercial applicator category or subcategory in which the applicant has applied to be certified. For applicants wishing to be certified in more than one category or subcategory, the Department will certify the applicant for each category or subcategory for which the applicant passes the relevant examination.
 - (1) Any applicant who fails the core examination may retake the same thirty (30) days after such date of examination. If the applicant fails the core examination for a second time, he may retake the same ninety (90) days after the date of the second examination. In case of three or more failures, he may retake the core examination one (1) year after the date of the last examination failed.
 - (2) Any applicant who fails a category examination may retake an examination for the same category thirty (30) days after the date of such examination. If he fails the examination for the same category a second time, he may retake the same ninety (90) days after the date of the second examination. In the case of three or more failures, he may retake the same one hundred and twenty (120) days after the date of the last examination failed.
- (b) To be certified, an applicant for commercial certification who has passed a core examination, must retake the core examination if:
 - (1) The applicant fails to pass at least one Department-approved category or subcategory examination within twelve months of passing the core examination;
 - (2) The applicant takes a category or subcategory examination three times in succession without passing it; or
 - (3) The applicant fails to submit a complete certification application (including accompanying documentation, payment of fees and proof of financial responsibility) within three months of notification that the applicant has passed the last examination necessary for certification.
- (c) All applicants for private pesticide applicator certification shall be required to pass a Department-approved private applicator examination.

- (1) Every applicant who fails the private certification examination may retake the same thirty (30) days after such date of examination. If the applicant fails the examination for a second time, he may retake the same ninety (90) days after the date of the second examination. In case of three or more failures, he may retake the examination one (1) year after the date of the last examination failed.
- (d) To be certified, an applicant for private certification who has passed the examination for certification as a Private Applicator must retake that examination if the applicant failed to submit a complete certification application (including accompanying documentation and payment of fees) within three months of notification that the applicant has passed the examination necessary for certification.
- (e) An applicant must score at least seventy percent (70%) on an examination to pass it.

803-34. Initial Certification

- (a) On passing the required examinations, an individual will receive a notice that the applicant passed the examinations and may request certification from the Department by submitting an application on a Department-approved form, including requisite documentation and payment of the fees specified in 803-32.
- (b) On receipt of the fees required under section 803-32(c), a complete application (including requisite documentation and, for Commercial Applicators, proof of financial responsibility), and verification from the entity conducting the relevant examinations that the applicant passed the examinations, the Department will certify the applicator and issue a certification card to the Certified Applicator. The certification card will specify the type of certification (i.e., private or commercial) and, for Commercial Applicators, the categories and subcategories of pesticide application in which the Commercial Applicator may engage.
- (c) The certification and certification card shall be valid for a period of four years and shall expire on the date specified on the card, unless suspended, revoked or otherwise modified by the Department. Recertification shall also be valid for four years. For commercial certifications, the addition of a category or subcategory certification pursuant to subsection (d) shall not be grounds for modifying the time period during which a certification card and certification or recertification are valid.
- (d) While a commercial certification card is valid, the Department may certify the applicator in additional categories or subcategories in which the applicator demonstrates competency by passing the required examinations and paying a \$5 fee, as adjusted for inflation by the Department pursuant to section 803-5. The Department shall issue a revised certification card with the additional category, but certification for an additional category or subcategory under this subsection shall be valid as long as the original certification card was valid and shall not

change the card's expiration date.

803-35. Renewal Requirements for Pesticide Applicator Certification

- (a) To renew a commercial pesticide certification, prior to the expiration of the applicator's current certification the applicator must:
 - (1) submit a complete Department-supplied form for commercial pesticide applicator recertification, including requisite accompanying documentation;
 - (2) pay the certification fees specified in subsection 803-32(c);
 - (3) satisfy the Act's financial responsibility requirements; and
 - (4) either
 - (A) pass a Department-approved core recertification examination and a Department-approved examination for at least one category or subcategory, or
 - (B) earn seven Continuing Education Credits (CECs) covering core and category commercial applicator competencies through courses, meetings or seminars approved by the Department. One credit will require at least fifty minutes of instruction.
- (b) To renew a private pesticide certification, prior to the expiration of the applicator's current certification the applicator must:
 - (1) submit a complete Department-supplied form for private pesticide applicator recertification, including requisite accompanying documentation;
 - (2) pay the certification fees specified in subsection 803-32(c); and
 - (3) either
 - (A) pass a Department-approved private applicator recertification examination, or
 - (B) earn seven Continuing Education Credits (CECs) covering private applicator competencies through courses, meetings or seminars approved by the Department. One credit will require at least fifty minutes of instruction.
- (c) To renew a private or commercial certification within 120 days after the expiration of the applicator's certification, the applicator must meet the requirements of subsection (a)(1) – (3) for commercial certification or subsection (b)(1) and (2) for private certification and either:

- (1) within 90 days of the expiration of the applicator's certification, demonstrate that the applicator had, prior to that expiration date, met the relevant CEC requirements in subsection (a)(4)(B) for commercial certification or (b)(3)(B) for private certification; or
 - (2) retake and pass the relevant recertification examinations needed for the expired certification.
- (d) The Department will issue a new certification card when the requirements for recertification are met.
 - (1) The certification will be effective on the later of:
 - (A) the expiration date of the prior certification, or
 - (B) the date the Department determines that the recertification requirements have been met and issues the new certification card.
 - (2) The recertification shall be valid for four years from its effective date.
- (e) Any applicator failing to apply for renewal of certification within 120 days after expiration of his or her certification shall be required to be certified as for the first time.

803-36. Reciprocity

- (a) If the Commissioner determines that there is a shortage of Commercial Applicators in a particular category, the Commissioner in his sole discretion may waive all or any part of the training and examination requirements in 803-33 for certification for any person who is currently certified with another state, territory, agency or Indian tribe which has an EPA-approved certification program with initial certification requirements comparable to those in these regulations.
- (b) A determination of a shortage of Commercial Applicators means that there is or is likely to be greater demand for applicators in a particular category than there are reasonably available Commercial Applicators in the Territory in that category or subcategory and that the demand cannot be met in a reasonable time through normal Department-approved training and certification. This could include, but is not limited to, the following circumstances:
 - (1) creation of a new category or subcategory for which the Department has not yet approved training; or
 - (2) an emergency situation (or other unusual circumstance) in the Territory which has created a short-term, unusually high, unmet demand for Commercial Applicators in a specific category or subcategory.

- (c) Any person requesting such reciprocal certification shall meet the requirements for commercial certification in 803-32 (except as waived pursuant to subsection (a) above) and:
- (1) Furnish proof of his or her current certification from the relevant certifying agency;
 - (2) Demonstrate his or her knowledge of and agree to comply with the requirements of the Act and the regulations adopted thereunder. Such demonstration may be evidenced by an affidavit executed by the applicant to the effect that he or she has read and is familiar with such legal requirements; and
 - (3) Submit an application on a Department-supplied form and pay a fee equal to one-fourth of the commercial applicator fee set forth in 803-32(c).
- (d) Certifications issued based on waivers granted pursuant to this section cannot be renewed under section 803-35. An applicator certified based on a waiver pursuant to this section can re-apply under this section.
- (e) The Commissioner shall revoke the certification of any Commercial Applicator whose certification or license has been revoked by the certifying agency whose certification or licensing was used as a basis for waiving requirements under this section. The Commissioner may also revoke such certifications pursuant to section 803-37.

803-37. Denial, Suspension or Revocation of Certified Pesticide Applicator Certification

- (a) The Department may deny an application for certification or may suspend, revoke or otherwise modify an applicator certification after the certification card is issued, for reasons including, but not limited to, the following:
- (1) any statement in the application or upon which certification was granted and the certification card was issued is or was false or misleading;
 - (2) the applicant or certified pesticide applicator has been convicted of a felony;
 - (3) the applicant or certified pesticide applicator applied or used any pesticide contrary to the registered label, labeling usage or usages (including those as approved, modified or expanded by the Department;
 - (4) the applicant or certified pesticide applicator has been found to have engaged in fraudulent business practices in the application of pesticides;
 - (5) the applicant or certified pesticide applicator has failed to comply with any provision of the Act, or rules and regulations of the Department issued pursuant thereto;

- (6) the applicant or certified pesticide applicator has failed to demonstrate sufficient knowledge and experience concerning the proper use and application of pesticides;
 - (7) the applicant or certified pesticide applicator has falsified any records or reports or has failed to maintain such records or reports required by these regulations or any applicable statute;
 - (8) the certified Commercial Applicator no longer meets the financial responsibility requirements of section 803-32(e) or lacks a Virgin Islands business license, if required to have one pursuant to 27 V.I.C. § 301 *et seq.*; or
 - (9) the applicant or certified pesticide applicator has been convicted of a criminal violation under section 14(b) of FIFRA, as amended, or 12 V.I.C. § 842(c) or has been made subject to a final order imposing a civil penalty under section 14(a) of FIFRA, as amended or 12 V.I.C. § 842(b).
- (b) An applicant or certified pesticide applicator must be given due notice and the opportunity of a hearing, prior to the final denial, suspension, revocation or material modification of a certification or certification card.
- (c) Notwithstanding the preceding subsection and the expiration date on a certification card, all certification cards issued before the effective date of these regulations ~~{date}~~ expire on October 1, 2024, unless prior to that date the applicator has taken a Department-approved course regarding new requirements of these regulations, and obtains a new certification card that reflects timely compliance with the new certification requirements.

803-38. Business and Agency Registration

- (a) Each Pesticide Business and Pesticide Agency must register every three years in the manner described by the Department. All applications for registration must include all information and supporting documents required by the Department.
- (b) A Pesticide Business must pay a fee of \$500, as adjusted for inflation pursuant to section 803-5, to the Department at the time of each registration, except that the fee is an additional \$50, as adjusted for inflation by the Department pursuant to section 803-5, when a registration renewal application is filed less than thirty days before the registration expiration date.
- (c) Pesticide Businesses required to register with the Department under this section that have more than one place of business within the Territory must register and must pay the registration fee for each such place of business. Individuals conducting business under more than one name must register and pay the annual registration fee for each such name

at each place of business. A business firm using a telephone answering service as an extension of the business in a location where the business does not otherwise maintain an office but where messages are collected and given directly to employees of the registered business who will service these accounts must pay a registration fee for each location where such messages are collected. Answering services directing messages to registered places of business are not required to register with the Department.

- (d) Registration expires on the date three years after the date the registration was issued. Unless suspended, revoked, or otherwise modified by the Commissioner, registrations shall be valid until the latter of the expiration date, or the date that the Commissioner takes final action on a registration renewal request that was completed and filed no later than thirty days before that expiration date.
- (e) Pesticide Businesses and Agencies required to register under subsection (a) must meet the applicable reporting and recordkeeping requirements of 803-81.
- (f) The Commissioner may deny an application for a Pesticide Business or Pesticide Agency registration or may suspend, revoke or otherwise modify such registration once issued for reasons, including, but not limited to, the following:
 - (1) any statement in the application or upon which the registration was issued, is or was false or misleading;
 - (2) the applicant or Pesticide Business or Agency has been convicted of a felony;
 - (3) a present employee of the applicant or Pesticide Business or Agency , or a former employee in the course of such employment, applied or used any pesticide contrary to the registered label usage (including the label as modified or expanded and approved by the Department);
 - (4) the applicant or Pesticide Business or Agency has been found to have engaged in fraudulent business practices in the application of pesticides;
 - (5) the applicant or Pesticide Business or Agency, or any present employee or former employee in the course of such employment, has failed to comply with any provision of the Act or rules and regulations of the Department made pursuant thereto;
 - (6) the applicant or Pesticide Business or Agency has failed to employ individuals who have demonstrated that they have sufficient knowledge and experience concerning the proper use and application of pesticides gained either through certification or through company training and on-the-job training after employment;

- (7) the applicant's Pesticide Business's or Agency's lack of a valid and current Virgin Islands Business License pursuant to 27 V.I.C. § 301 *et seq.*;
 - (8) the applicant or Pesticide Business or Agency has falsified any records or reports or has failed to maintain such records or reports required by these regulations or any applicable statute; or
 - (9) the applicant or Pesticide Business or Agency, or any present employee or former employee in the course of such employment, has been convicted of a criminal violation under section 14(b) of FIFRA, as amended, or 12 V.I.C. § 842 (c) or has been made subject to a final order imposing a civil penalty under section 14(a) of FIFRA, as amended, or 12 V.I.C. § 842(b).
- (g) Prior to issuing a final decision denying, suspending, revoking or materially modifying a pesticide business or agency registration for the reasons provided in subsection (f), the Commissioner shall provide at least 20 days advance notice to the applicant or Pesticide Business or Agency and an opportunity for a hearing in front of the Commissioner. The Commissioner's decision to deny an application for a Pesticide Business registration or to suspend, revoke or otherwise modify such registration once issued shall be final unless the aggrieved party appeals the decision or order to the Superior Court of the Virgin Islands pursuant to 5 V.I.C. § 1421 *et seq.* within 30 days after service on him by personal service or by certified mail of such order or decision.
- (h) Pesticide Businesses shall carry commercial general liability insurance on a "per occurrence" basis with a minimum limit of not less than one million dollars (\$1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage, or a surety bond of comparable value, issued by a company licensed to do business in the U.S. Virgin Islands and in a form acceptable to the Department, as proof of financial responsibility. The minimum limits may be adjusted for inflation by the Department pursuant to section 803-5. Insurance policies shall name the Government of the Virgin Islands as the certificate holder. No Pesticide Business or Agency shall engage in the application of restricted use pesticides or the Commercial Application of general use pesticides unless the Business or Agency has at least one employee who is a Commercial Applicator, certified in the proper category in which the Business or Agency intends to engage at each location required to be registered, and at least one employee who is a Commercial Applicator, certified in the proper category, for every five Pesticide Technicians who are employed by the business or agency..

DIVISION 4. REQUIREMENTS FOR TRAINING COURSES AND EXAMINATIONS

803-41. Commercial Applicators: Requirements for Core Competency Training Courses

and Examinations

- (a) Courses and examinations cannot be used to meet the requirements of 803-32 and 35 to demonstrate competency in the core standards for the use and handling of pesticides unless they are pre-approved by the Department.
- (b) To be approved by the Department, core competency training courses and examinations for certification and recertification must include topics or components as prescribed by the Department. Such topics must include, but are not limited to, the following:
 - (1) Label and labeling comprehension. Familiarity with pesticide labels and labeling and their functions, including all of the following:
 - (A) The general format and terminology of pesticide labels and labeling.
 - (B) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.
 - (C) Understanding that it is a violation of both Territorial and Federal law to use any registered pesticide in a manner inconsistent with its labeling.
 - (D) Understanding labeling requirements that a Commercial Applicator must be physically present at the site of the application.
 - (E) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a Commercial Applicator.
 - (F) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application.
 - (G) Understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified.
 - (H) Understanding and complying with product-specific notification requirements.
 - (I) Recognizing and understanding the difference between mandatory and advisory labeling language.
 - (J) Requirements to have labels during applications and to provide labels to others, including the requirements of section 803-3(d).

(2) Safety factors. Measures to avoid or minimize adverse health effects, including all of the following:

- (A) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.
- (B) Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.
- (C) Common types and causes of pesticide accidents or mishaps.
- (D) Understanding the terms "acute toxicity" and "chronic toxicity" as well as long-term effects of pesticides.
- (E) Precautions necessary to guard against injury to applicators and other individuals in or near treated areas.
- (F) Need for and proper use of protective clothing and equipment.
- (G) Symptoms of pesticide poisoning.
- (H) First aid and other procedures to be followed in case of a pesticide accident.
- (I) Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(3) Environment. The potential environmental consequences of the use and misuse of pesticides, including the influence of all of the following:

- (A) weather and other indoor and outdoor climatic conditions;
- (B) types of terrain, soil or other substrate;
- (C) presence of fish, wildlife and other nontarget organisms;
- (D) presence of pollinators; and
- (E) drainage patterns.

(4) Pests. The proper identification and effective control of pests, including all of the following:

(A) The importance of correctly identifying target pests and selecting the proper pesticide product(s) for effective pest control.

(B) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).

(5) Pesticides. Characteristics of pesticides, including all of the following:

(A) types of pesticides;

(B) types of formulations;

(C) compatibility, synergism, persistence and animal and plant toxicity of the formulations;

(D) hazards and residues associated with use;

(E) factors which influence effectiveness or lead to such problems as resistance to pesticides; and

(F) dilution procedures.

(6) Equipment. Application equipment, including all of the following:

(A) types of equipment and advantages and limitations of each type; and

(B) uses, maintenance and calibration.

(7) Application methods. Selecting appropriate application methods, including all of the following:

(A) Methods of procedure used to apply various forms and formulations of pesticides, solution and gases, together with a knowledge of which technique of application to use in a given situation;

(B) Knowledge of which application method to use in a given situation and that use of a fumigant requires additional certification;

(C) How selection of application method and use of a pesticide may result in proper

use, unnecessary or ineffective use, and misuse.

- (D) Relationship of discharge and placement of pesticides to proper use, unnecessary or ineffective use, and misuse.
 - (E) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of applicable Territorial and Federal laws and regulations.
- (9) Responsibilities of supervisors of Pesticide Technicians. Knowledge of all responsibilities of a Commercial Applicator supervising Pesticide Technicians as required by 803-51 and 52, including all of the following:
- (A) The recordkeeping requirements of pesticide safety training for Pesticide Technicians who use restricted use pesticides under the direct supervision of a Commercial Applicator in section 803-81(a)(1)(B).
 - (B) Providing use-specific instructions to Pesticide Technicians using restricted use pesticides under the direct supervision of a Commercial Applicator.
 - (C) Explaining pertinent territorial and federal laws and regulations to Pesticide Technicians who use restricted use pesticides under the direct supervision of a Commercial Applicator.
- (10) Professionalism. Understanding the importance of all of the following:
- (A) Maintaining chemical security for restricted use pesticides.
 - (B) How to communicate information about pesticide exposures and risks with their clientele and the public.
 - (C) Appropriate product stewardship for Commercial Applicators.

c) If requested by any Person, IPM instructional materials concerning IPM techniques may be made available and address the following:

- (A) Systematic approach to managing pests which focuses on long-term prevention or suppression with minimal impact on human health, the environment and nontarget organisms; and
- (B) Incorporate all reasonable measures to prevent pest problems by properly identifying pests, monitoring population dynamics, and utilizing cultural, physical, biological or chemical pest

population control methods to reduce pests to acceptable levels.

803-42. Commercial Applicators: Categories of Commercial Pesticide Application and Requirements for Training Courses and Examinations for Each Category

- (a) Training courses and examinations cannot be used to meet the requirements of 803-32 and 35 for demonstrating competency in specific categories or subcategories for commercial pesticide application unless they are pre-approved by the Department.
- (b) To be approved by the Department, training courses and examinations for certification and recertification must include topics or components as prescribed by the Department. For each category or subcategory, the topics must include, but are not limited to, those described below for each category or subcategory.

- (1) Agricultural pest control.

- (A) Crop pest control.

- (i) Description of Subcategory. This subcategory includes Commercial Applicators using or supervising the use of pesticides (including chemigation) in the production of agricultural crops, including, but not limited to, corn, alfalfa, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, on grasslands, and non-crop agricultural lands.

- (ii) Required Competencies. Applicators applying pesticides to agricultural plants must demonstrate practical knowledge of crops, grasslands, and non-crop agricultural lands and the specific pests of those areas on which they may be using pesticides. The importance of such competency is amplified by extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. The required knowledge includes pre-harvest intervals, restricted entry intervals, phytotoxicity, potential for environmental contamination such as soil and water problems, nontarget injury, and other problems resulting from the use of restricted use pesticides in agricultural areas. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control and for nontarget exposures.

- (B) Livestock Pest Control.

- (i) Description of Subcategory. This subcategory includes Commercial Applicators using or supervising the use of pesticides on animals (including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry

and livestock), as well as to places on or in which animals are confined.

- (ii) Required Competencies. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. The required knowledge includes pesticide toxicity and residue potential and the hazards associated with such factors as formulation application techniques, age of animals, stress and extent of treatment. Applicators must also demonstrate knowledge of EPA's Worker Protection Standards in 40 CFR Parts 156 and 170.

(2) Ornamental and turf pest control.

(A) Description of Category. This category includes Commercial Applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental and shade trees, shrubs, flowers and turf, interior plant maintenance, greenhouses and nurseries, flood control structures, golf courses, outdoor broadcast treatments for fleas, ticks, and other such pests, forest insects or disease control for aesthetic purposes. This category also includes the use of animal repellents on lawns or shrubs. The turf subcategory also includes pre- or post-construction herbicide treatment for driveways, parking lots and other such facilities.

(B) Required Competencies. Applicators must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental plants and turf. The required knowledge includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for nontarget exposures. The applicator must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals, and satisfying notification requirements. The applicator must demonstrate an understanding of any lawn application requirements of promulgated by the Department and the termite control requirements of section 803-62. Applicators must also demonstrate knowledge of EPA's Worker Protection Standards in 40 CFR Parts 156 and 170.

(3) Aquatic pest control.

(A) Antifouling Paints: Description of Category. This subcategory includes commercial pesticide applicators who use or supervises the use of restricted use pesticides for the application of pesticide products to prevent, remove, or control the growth of pests, including but not limited to weeds, algae, and organic material in swimming pools and other similar recreational water environments.

(B) Required Competencies. Applicators must demonstrate practical knowledge of antifouling paints and their use in the control of marine pests, including recognizing, identifying and understanding the nature of these pests, their habitats, and their behavior as it pertains to control of these pests. Must be competent in reading and understanding product labels, identifying product risks following PPE requirements, potential adverse effects on non-target organisms in the immediate aquatic environment, principles of limited area application, potential health and environmental hazards and proper procedures for mixing, loading, applying, and disposing of antifouling paints, to prevent or minimize hazards.

(C) Swimming Pool Treatments: Description of Sub-Category. This subcategory includes commercial pesticide applicators who use or supervises the use of restricted use pesticides for the application of pesticide products to prevent, remove, or control the growth of pests, including but not limited to weeds, algae, and organic material in swimming pools and other similar recreational water environments.

(D) Required Competencies. Description of Sub-Category. Applicators must demonstrate practical knowledge of water treatment methods pertaining to pest control, identification of pests, their habitats, life cycles, understanding product labels, potential adverse effects on non-target organisms in the immediate aquatic environment, principles of limited area application, and their behavior in aquatic environments as it relates to understanding how to control the above mentioned pests.

(4) Rights-of-way pest control.

(A) Description of Category. This category includes Commercial Applicators using or supervising the use of pesticides in the maintenance of highways, electric power lines, gas or other pipelines and other related facilities such as, but not limited to, the areas around generating stations, substations, pumping stations and associated buildings and in-place applications to utility poles.

(B) Required Competencies. Applicators must demonstrate practical knowledge of the types of environments (terrestrial and aquatic) traversed by rights of ways, techniques to minimize nontarget exposure, runoff, drift and excessive foliage destruction and recognition of target pests. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants and pests to be controlled for drift, for persistence beyond the intended period of pest control and for nontarget exposures.

(5) Industrial, institutional and structural pest control.

(A) Description of Category. This category includes Commercial Applicators using or supervising the use of pesticides in, on or around food handling establishments, packing houses, and food-processing facilities; human dwellings; institutions such as schools and hospitals; and industrial establishments, including warehouses, grain elevators and any other structures and adjacent areas, public or private, for the protection of stored, processed or manufactured products.

(B) Required Competencies. The applicator must demonstrate a practical knowledge of industrial, institutional and structural pests, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control. The applicator must also demonstrate practical knowledge of types of formulations appropriate for control of industrial and structural pests, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts of outdoor applications. The applicator must demonstrate a knowledge and understanding of the requirements of 803-62 regarding termite control. The applicator must demonstrate knowledge of how to apply pesticides to areas other than individual residences where exposed food or food products are prepared, packaged or held for further distribution or consumption, including the use of fumigants to control appropriate food pests (which would require certification in the non-soil fumigation category).

(6) Public health pest control.

(A) Description of Category. This category includes territorial, federal or other governmental personnel, their contractors and other Commercial Applicators using or supervising the use of pesticides in government-sponsored public health programs for the management and control of pests having medical and public health importance.

(B) Required Competencies. The applicator must demonstrate practical knowledge of pests that are important vectors of disease, including recognizing the pests and signs of their presence, their habitats, their life cycles, biology and behavior as it may be relevant to problem identification and control. The required knowledge also includes how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets and nontarget exposures.

(7) Regulatory pest control.

(A) Description of Coverage. This category includes territorial, federal or other governmental personnel and contractors who use, or supervise the use of pesticides

in government sponsored programs for the control of regulated pests. A regulated pest is a specific organism considered by an agency to be a pest requiring regulatory restrictions or control procedures in order to protect the host, man and/or his environment.

(B) Required Competencies. Applicators must demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They must demonstrate knowledge of factors influencing introduction, spread, and population dynamics of regulated pests.

(8) Demonstration and research pest control. Certification in this category requires concurrent certification in a second category of specialty.

(A) Description of Category. This category includes, but is not limited to, the following:

- (i) individuals demonstrating to the public the proper use and techniques of application of pesticides or who supervise such demonstration, including master gardeners, cooperative extension agents, soil and water conservation personnel; and
- (ii) individuals conducting or supervising field research with pesticides, including State, federal, university personnel and other individuals conducting field research on or utilizing pesticides.

(B) Required Competencies. Applicators must demonstrate the safe and effective use of restricted use pesticides to other applicators and the public. They also must demonstrate practical knowledge of the potential problems, pests and population levels reasonably expected to occur in a demonstration situation and the effects of restricted use pesticides on target and nontarget organisms. In addition, they must demonstrate competency in each pest control category applicable to their demonstrations.

(9) Non-soil fumigation.

(A) Description of Category. This category applies to Commercial Applicators who use or supervise the use of a pesticide to fumigate anything other than soil.

(B) **Required Competencies.** Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications of restricted use pesticides to sites other than soil, including all the following:

- (i) **Label & labeling comprehension.** Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.
- (ii) **Safety.** Measures to minimize adverse health effects, including all of the following:
 - (a) Understanding how Commercial Applicators and bystanders can become exposed to fumigants.
 - (b) Common problems and mistakes that can result in direct exposure to fumigants.
 - (c) Signs and symptoms of human exposure to fumigants.
 - (d) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.
 - (e) Steps to take if a fumigant applicator experiences sensory irritation.
 - (f) Understanding air monitoring, when it is required, and where and when to take samples.
 - (g) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.
 - (h) First aid measures to take in the event of exposure to a fumigant.
 - (i) Labeling requirements for transportation, storage, spill clean up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.
- (iii) **Non-soil fumigant chemical characteristics.** Characteristics of non-soil fumigants, including all of the following:
 - (a) Chemical characteristics of non-soil fumigants.
 - (b) Specific human exposure concerns for non-soil fumigants.
 - (c) How fumigants change from a liquid or solid to a gas.

- (d) How fumigants disperse in the application zone.
- (e) Compatibility concerns for tanks, hoses, tubing, and other equipment.
- (iv) Application. Selecting appropriate application methods and timing, including all of the following:
 - (a) Application methods and equipment commonly used for non-soil fumigation.
 - (b) Site characteristics that influence fumigant exposure.
 - (c) Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions.
 - (d) Conducting pre-application inspection of application equipment and the site to be fumigated.
 - (e) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.
 - (f) Calculating the amount of product required for a specific treatment area.
 - (g) Understanding the basic techniques for calibrating non-soil fumigant application equipment.
 - (h) Understanding when and how to conduct air monitoring and when it is required.
- (v) Pest factors. Pest factors that influence fumigant activity, including all of the following:
 - (a) Influence of pest factors on fumigant volatility.
 - (b) Factors that influence gaseous movement through the area being fumigated and into the air.
 - (c) Identifying pests causing the damage and verifying they can be controlled with fumigation.
 - (d) Understanding the relationship between pest density and application rate.
 - (e) The importance of proper application rate and timing.

- (vi) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:
 - (a) Following labeling directions for required personal protective equipment.
 - (b) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.
 - (c) Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.
 - (d) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.
- (vii) Fumigant management plans and post-application summaries. Information about fumigant management plans and when they are required, including all of the following:
 - (a) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.
 - (b) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.
 - (c) The person responsible for verifying that a fumigant management plan is accurate.
 - (d) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.
- (viii) Posting requirements. Understanding posting requirements, including all of the following:
 - (a) Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.
 - (b) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.
 - (c) Proper choice and placement of warning signs.

803-43. Private Applicators: Requirements for Training Courses and Examinations

- (a) Courses and examinations cannot be used to meet the requirements of 803-32 and 35 for demonstrating competency in the core standards for the use and handling of pesticides, and in the application of pesticides for the purpose of producing agricultural commodities, unless they are pre-approved by the Department.
- (b) To be approved by the Department, private applicator training courses and examinations for certification and recertification must include topics or components as prescribed by the Department. Such topics must include, but are not limited to, the following:
 - (1) Label and labeling comprehension. Familiarity with pesticide labels and labeling and their functions, including all of the following:
 - (A) The general format and terminology of pesticide labels and labeling.
 - (B) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.
 - (C) Understanding that it is a violation of Territorial and Federal law to use any registered pesticide in a manner inconsistent with its labeling.
 - (D) Understanding when a Private Applicator must be physically present at the site of the application based on labeling requirements.
 - (E) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a Private Applicator.
 - (F) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the appropriate category to use restricted use pesticides for fumigation.
 - (G) Understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified.
 - (H) Understanding and complying with product-specific notification requirements.
 - (I) Recognizing and understanding the difference between mandatory and advisory labeling language.
 - (J) Understanding the requirements of EPA's Worker Protection Standard at 40 CFR Parts 156 and 170.
 - (2) Safety. Measures to avoid or minimize adverse health effects, including all of the following:
 - (A) Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides.
 - (B) Understanding that a pesticide's risk is a function of exposure and the

pesticide's toxicity.

- (C) Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.
 - (D) Common types and causes of pesticide mishaps.
 - (E) Precautions to prevent injury to applicators and other individuals in or near treated areas.
 - (F) Need for, and proper use of, protective clothing and personal protective equipment.
 - (G) Symptoms of pesticide poisoning.
 - (H) First aid and other procedures to be followed in case of a pesticide mishap.
 - (I) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.
- (3) Environment. The potential environmental consequences of the use and misuse of pesticides, including the influence of the following:
- (A) Weather and other climatic conditions.
 - (B) Types of terrain, soil, or other substrate.
 - (C) Presence of fish, wildlife, and other nontarget organisms.
 - (D) Drainage patterns.
- (4) Pests. The proper identification and effective control of pests, including all of the following:
- (A) The importance of correctly identifying target pests and selecting the proper pesticide product(s).
 - (B) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).
- (5) Pesticides. Characteristics of pesticides, including all of the following:
- (A) Types of pesticides.
 - (B) Types of formulations.
 - (C) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.

- (D) Hazards and residues associated with use.
- (E) Factors that influence effectiveness or lead to problems such as pesticide resistance.
- (F) Dilution procedures.
- (6) Equipment. Application equipment, including all of the following:
 - (A) Types of equipment and advantages and limitations of each type.
 - (B) Uses, maintenance, and calibration procedures.
- (7) Application methods. Selecting appropriate application methods, including all of the following:
 - (A) Methods used to apply various forms and formulations of pesticides.
 - (B) Knowledge of which application method to use in a given situation and that use of a fumigant requires additional certification.
 - (C) How selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse.
 - (D) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of all applicable Territorial and Federal laws and regulations, including understanding the Worker Protection Standard in 40 CFR parts 156 and 170 and the circumstances where compliance is required.
- (9) Responsibilities for supervising Pesticide Technicians, and agricultural workers and handlers. Private Applicator responsibilities related to supervision of Technicians, and agricultural workers and handlers, including all of the following:
 - (A) Understanding and complying with requirements related to agricultural workers and handlers in EPA's Worker Protection Standard in 40 CFR parts 156 and 170, and.
 - (B) Understanding and complying with requirements in section 803-51 and 52 for Private Applicators who supervise pesticide technicians using restricted use pesticides.
- (10) Stewardship. Understanding the importance of all of the following:
 - (A) Maintaining chemical security for restricted use pesticides.
 - (B) How to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons.

(11) Agricultural pest control. Practical knowledge of pest control applications to agricultural commodities including all of the following:

- (A) Specific pests of relevant agricultural commodities.
- (B) How to avoid contamination of ground and surface waters.
- (C) Understanding pre-harvest and restricted entry intervals and entry-restricted periods and areas.
- (D) Understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities.
- (E) Relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.

803-44. Requirements for Approval of Training Courses and Examinations

- (a) All training courses for certification and recertification must be pre-approved by the Department.
 - (1) The Department will not approve a certification or recertification training course unless the individual or organization conducting the course has appropriate credentials as determined by the Department.
 - (2) Appropriate credentials may include academic credits in courses to be covered by the training course or at least three years of verifiable experience as a certified commercial pesticide applicator.
 - (3) The Department may determine that individuals with a previous enforcement record may not be eligible to conduct certification and recertification courses.
- (b) To obtain approval of continuing education classes ---
 - (1) Course providers must submit detailed content of each continuing education course to DPNR for review, approval and assignment of course credits;
 - (2) Course providers must submit instructor bios, a detailed course outline, and the number of hours of instruction (not counting break times);
 - (3) Course providers must verify the identity of attendees by examining each attendee's valid, government-issued, photo identification (or other form of similarly reliable identification authorized by the Department) and certification card;

- (4) Course providers shall notify the Department of each attendee's successful completion of the course by providing the attendee's name and applicator certification card number; and
 - (5) Upon successful completion of the course, the course provider shall provide a certificate of completion to the attendee with the name of the course, the date of completion, and the name of the instructor.
- (c) DPNR pesticide personnel will monitor certification and recertification classes periodically and identify any issues related to content, instruction time and instructors.
- (d) All examinations for certification and recertification must be pre-approved by the Department. The Department shall not approve certification or recertification examinations unless it is satisfied that the following criteria will be met:
- (1) The examinations will be presented and answered in writing.
 - (2) The examination will be proctored by an individual approved by the Department and who is not seeking certification at any examination session he or she is proctoring.
 - (3) At the time of the examination, each candidate will be required to present valid, government-issued, photo identification (or other form of similarly reliable identification authorized by the Department) as proof of identity and age;
 - (4) Candidates will be monitored throughout the examination period.
 - (5) Candidates will be instructed in examination procedures before beginning the examination.
 - (6) Examinations will be kept secure before, during and after the examination period so that only the candidates, the proctor and people assisting the proctor (if any) have access to the examination and only in the presence of the proctor.
 - (7) Candidates will not have verbal or non-verbal communication with anyone other than the proctor (or people assisting the proctor, if any) during the examination period.
 - (8) No portion of the examination or any associated reference materials described in paragraph (d)(9) may be copied or retained by any person other than a person authorized by the Department or its designee to copy or retain the examination or such materials.

- (9) The only reference materials used during the examination are those that are approved by the Department or its designee. Such reference materials shall be provided and collected by the proctor or people assisting the proctor, if any. The proctor shall ensure that such reference materials are reviewed after the examination is complete to ensure that no portion of such reference materials has been removed, altered or destroyed.
 - (10) The proctor shall report to the Department any examination administration inconsistencies or irregularities, including but not limited to cheating, use of unauthorized materials and any attempts to copy or retain the examination.
 - (11) The individual or organization conducting the examination shall notify the Department and each applicant of the results of his or her examination.
 - (12) The examination must be conducted in accordance with any other requirements of the Department related to examination administration.
- (e) DPNR will meet at least once a year with the Territorial agency providing training and examinations to discuss manuals, exam development and course reviews.

DIVISION 5 – PESTICIDE TECHNICIANS

803-51. How to Qualify as a Pesticide Technician Allowed to Work Under the Direct Supervision of a Certified Applicator

- (a) This section and section 803-52 explain how individuals, called Pesticide Technicians, who are not Certified Applicators may be allowed to apply general use pesticides commercially or to mix, load, apply or otherwise use restricted use pesticides under the direct supervision of a Certified Applicator.
- (b) To qualify as a Pesticide Technician, an individual must satisfy the training requirements in subsection (c) and be at least 18 years old, except that a Pesticide Technician must be at least 16 years old if both the following requirements are met:
 - (1) The pesticide technician is using the restricted use pesticide under the direct supervision of a Private Applicator who is an immediate family member; and
 - (2) The restricted use pesticide is not a fumigant.
- (c) To be a Pesticide Technician, an individual must satisfy at least one of the following training

requirements:

- (1) Within the last 12 months, attended a Department-approved commercial applicator certification training course on the core standards or a Department-approved private applicator certification training course.
 - (2) Within the last 12 months, met the training requirements for an agricultural handler under 40 C.F.R. § 170.201(c).
 - (3) Within the last 12 months, attended a Department-approved Pesticide Technician training program that satisfies the requirements of Section 803-51(d).
 - (4) Have a valid Department-issued commercial pesticide applicator certification for another category.
 - (5) Have a valid Department-issued private pesticide applicator certification.
 - (6) Have a valid pesticide applicator certification from another jurisdiction with an EPA-approved certification and training program.
- (d) A Pesticide Technician training program must meet all of the following:
- (1) The information must be presented either orally from written materials or audio-visually.
 - (2) The information must be presented in a manner that the Pesticide Technicians can understand, such as through a translator.
 - (3) The person conducting the training must be present during the entire training program and must respond to the Pesticide Technicians' questions.
 - (4) The person conducting the training must meet at least one of the following criteria:
 - (A) Be currently certified as a Commercial or Private Applicator by the Department;
 - (B) Be currently designated a trainer of Certified Applicators by the Department; or
 - (C) Have completed a pesticide safety train-the-trainer program under 40 CFR

Part 170, as published, and appearing annually thereafter, as amended and supplemented.

- (5) The training materials must include, at a minimum:
- (A) Potential hazards from toxicity and exposure that pesticides present to Technicians and their families, including acute and chronic effects, delayed effects, and sensitization.
 - (B) Routes through which pesticides can enter the body.
 - (C) Signs and symptoms of common types of pesticide poisoning.
 - (D) Emergency first aid for pesticide injuries or poisonings.
 - (E) Routine and emergency decontamination procedures, including emergency eye flushing techniques. Technicians must be instructed that if pesticides are spilled or sprayed on the body, they should immediately wash or rinse off in the nearest clean water. Technicians must also be instructed to wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible.
 - (F) How and when to obtain emergency medical care.
 - (G) After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.
 - (H) Wash or shower with soap and water, shampoo hair and change into clean clothes as soon as possible after working with pesticides.
 - (I) Potential hazards from pesticide residues on clothing.
 - (J) Wash work clothes before wearing them again and wash them separately from other clothes.
 - (K) Do not take pesticides or pesticide containers used at work to your home.
 - (L) Potential hazards to children and pregnant women from pesticide exposure and precautions to protect children and pregnant women from those hazards.
 - (M) After working with pesticides, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

- (N) How to report suspected pesticide use violations and suspected pesticide illnesses to the Department.
- (O) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, including the location and meaning of the restricted use product statement, how to identify when the labeling requires the Certified Applicator to be physically present during the use of the pesticide, and information on personal protective equipment.
- (P) Need for, and appropriate use and removal of, personal protective equipment.
- (Q) How to recognize, prevent, and provide first aid treatment for heat-related illness.
- (R) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
- (S) Environmental concerns such as drift, runoff, and wildlife hazards.
- (T) Restricted use pesticides may be used only by a Certified Applicator, a Pesticide Technician working under the direct supervision of a Certified Applicator, or a pesticide handler covered under EPA's Worker Protection Standard. .
- (U) The Certified Applicator's responsibility to provide to each Technician instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population, and risks) and the conditions of application (e.g., equipment, method of application, formulation, and risks) might increase or decrease the risk of adverse effects. The Certified Applicator must provide these instructions in a manner the Technician can understand.
- (V) The Certified Applicator's responsibility to ensure that each Technician has access to the applicable product labeling at all times during its use.
- (W) The Certified Applicator's responsibility to ensure that where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each Technician has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and use correctly for its intended purpose.
- (X) The Certified Applicator's responsibility to ensure that, before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used

without risk of reasonably foreseeable adverse effects to the Technician, other persons, or the environment.

- (Y) The Certified Applicator's responsibility to ensure that a means to immediately communicate with the Certified Applicator is available to each Technician using restricted use pesticides under his or her direct supervision.

803-52. Direct Supervision Requirements and Protection of Technicians Using Pesticides Under the Direct Supervision of a Certified Applicator

- (a) A Pesticide Technician may mix, load, apply or otherwise use restricted pesticides under the direct supervision of a Certified Applicator only if all the requirements of this section are met.
- (b) A Commercial Applicator must be certified in each category applicable to the supervised use. A certified Private Applicator may only supervise Pesticide Technicians applying pesticides for the purpose of producing an agricultural commodity on property owned or leased by the certified private pesticide applicator or the Private Applicator's employer.
- (c) The Certified Applicator must ensure the Technician is trained in accordance with the requirements in Section 803-51(c) and (d). Commercial Applicators must keep records of such training as required by 803-81. If the certified pesticide applicator is working for a registered Pesticide Business or Pesticide Agency and is not the owner or manager, the owner or manager of the Business or Agency must keep the records of such training as required by 803-81.
- (d) The Certified Applicator must provide relevant safety information, restricted entry intervals, and personal protective equipment and/or other safety equipment beyond normal work attire, as specified by the pesticide product label, to Technicians using pesticides under the Certified Applicator's direct supervision. If the Certified Applicator is working for a registered Pesticide Business or Pesticide Agency and is not the owner or manager, then the owner or manager of the Business or Agency must provide such information and equipment.
- (e) When the label requires that personal protective equipment be worn for mixing, loading, application or other use activities, the Certified Applicator must ensure that:
- (1) The label-required personal protective equipment is clean and in proper operating condition.
 - (2) The Pesticide Technician wears the label-required personal protective equipment and uses it correctly for its intended purpose.
- (f) The Certified Applicator must ensure the Technician has in his or her possession a copy of the

full labeling for the pesticide used at all times during its use.

- (g) Before any Technician uses any equipment for mixing, loading, transferring or applying pesticides, the Certified Applicator must ensure that the Technician has been instructed in the safe operation of such equipment within the last twelve months.
- (h) The Certified Applicator must ensure that, before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the equipment manufacturer and can be used without risk of reasonably foreseeable adverse effects to the Pesticide Technician, other persons or the environment. The Certified Applicator must ensure that such equipment is inspected for leaks, clogging and worn or damaged parts. If worn or damaged parts or equipment are found, the Commercial Applicator must ensure that any damaged equipment is repaired or replaced prior to use.
- (i) Before a Pesticide Technician uses a restricted use pesticide, the Certified Applicator must provide to each Technician instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population) and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The Certified Applicator must provide this information in a manner that the Pesticide Technician can understand.
- (j) A Commercial Applicator must provide on-site direct supervision when a Pesticide Technician under his supervision:
 - (1) engages in the subsurface ground application of termiticides, the surface application of termiticides to exposed soil in basements and crawl spaces, and the placement of termiticide in voids of masonry foundations;
 - (2) Applies fumigants, except when using fumigants classified as general use pesticides that are applied to in-place utility poles;
 - (3) applies pesticides with a label requiring on-site supervision.
- (k) With respect to a Technician under the instruction and control of a Private Applicator, the following shall apply:
 - (1) On-site direct supervision by the Private Applicator is required when a Technician applies pesticides with a label requiring on-site supervision.
 - (2) Individuals under the supervision of Private Applicators shall not use fumigants.

- (l) During pesticide use by a Technician under the supervision of a Certified Applicator that requires on-site direct supervision, the Certified Applicator must be physically present at the application site and within voice contact of the individual being supervised. When a Technician uses a fumigant, the application must be made under the direct observation and instruction of the Commercial Applicator.
- (m) Off-site direct supervision is allowed when a Technician working under the instruction and control of a Certified Applicator uses pesticides that do not require on-site supervision as listed in section 803-52(j), provided the requirements of 802-52(n) are met.
- (n) During pesticide use that allows off-site direct supervision, the Certified Applicator must ensure that the Technician has a means to contact the supervising Certified Applicator immediately. The supervisor shall be on the application site within one hour of contact by the Technician. A Certified Applicator cannot provide off-site supervision for more than three (3) locations at the same time.
- (o) Commercial Applicators supervising Pesticide Technicians must create or verify the existence of the records required by Section 803-81(a)(1)(B) and must maintain access to these records at the Commercial Applicator's principal place of business for two years from the date the Pesticide Technician used the restricted use pesticide or made a Commercial Application of a general use pesticide.

DIVISION 6 – SPECIAL RULES FOR LAWN APPLICATIONS AND TERMITE CONTROL

803-61. Lawn Applications

[RESERVED pending further Department analysis]

803-62. Control of Termites

The following restrictions must be complied with when applying liquid termiticide (any substance or mixture of substances intended for preventing, destroying, repelling or mitigation subterranean termites):

- (a) Application of termiticide must be made in strict accordance with both the labeling of the termiticide being used and these regulations. Where termiticide labeling and these regulations address the same point, the more prohibitive requirements of the labeling or these regulations must be complied with.
- (b) Prior to subsurface ground application of termiticide by other than the excavation or treated

backfill technique, a visual inspection of the application area must be made by a Commercial Applicator certified in the ornamental and turf category (described in section 803-42(b)(2)) or the industrial, institutional and structural pest control category (described in section 803-42(b)(5)) to ensure that termiticide will not move from the application area into a structure. Application near foundations that have holes, cracks or voids must be made only if application is limited to the excavation or treated backfill technique, or if prior to application all holes, cracks and voids are filled with an impervious material in a manner that completely seals any openings and prevents termiticide from moving into the structure.

- (c) All pressurized application equipment used for subsurface ground application of termiticide must be equipped with a properly operating pressure gauge that is accurate to within plus or minus three pounds per square inch. During applications, pressure at the nozzle must not exceed 25 pounds per square inch.
- (d) During subsurface ground application of termiticide along the exterior of a basement wall by other than the excavation treated backfill technique and during placement of termiticide underneath a concrete slab by angled or horizontal rodding from an area outside the perimeter of the slab, at least two employees of the Pesticide Business must be present on the premises. During application, one of these employees must be present inside the structure to observe the area of application and to assist the applicator in detecting any intrusion of termiticide into the structure. At the first indication of any movement of termiticide into the structure, the applicator must immediately cease applying termiticide and initiate appropriate clean-up procedures.
- (e) Subsurface ground application of termiticide must not be made to soil at or below the level of the local water table as determined by:
 - (1) excavation of a test hole dug down to the lowest planned application area if evidence of a high water table is found, such as water stains or efflorescence on the interior surface of foundation walls, or the presence of a sump pit, sump pump or French drain in the structure to be treated. Application of termiticide to soil must not be made unless, at the end of two hours immediately following completion of excavation of the test hole, the test hole does not contain any water or saturated soil; or
 - (2) examination of all sump pits in the structure if they exist. Any standing water must be removed from sump pits, and all sump pumps must be removed from sump pits or disconnected from their power source for the next two hours. Application of termiticide to soil must not be made unless, at the end of two hours immediately following removal or disconnection of pumps, sump pits do not contain any water.
- (f) Subsurface ground application of termiticide must not be made to soil located within 10 feet of a well or cistern as measured across the surface of the soil from the application area to where

the well or cistern begins to descend vertically unless soil is removed and treated outside the foundation by the excavation or treated backfill technique, or unless a driven (steel casing) well screened in the water table aquifer has been abandoned in a manner which meets all of the following conditions:

- (1) all materials must be removed from the well (inner casings, pumps, pipes, electrical cable, etc.);
 - (2) all appurtenant features must be disconnected (water supply pipe); and
 - (3) all of the casing must be completely sealed with grout, cement or concrete for its entire length. Removal of the outer steel casing is not necessary.
- (g) Subsurface ground application of termiticide must not be made to soil within four feet above and beside water pipes that are located between 10 feet and 25 feet from wells or cisterns, as measured across the surface of the soil from the application area to where the well or cistern begins to descend vertically, unless application is limited to the excavation or treated backfill technique.
- (h) Application of termiticide shall not be made to voids in masonry foundations unless:
- (1) termiticide is applied as a subsurface ground application within 42 inches of the points along the foundation that are closest to the footing (a masonry support that underlies the foundation). Points of application must be on the side of the foundation closest to the footing where soil or a masonry element of construction adjoins the foundation. Anything restricting access to the bare masonry foundation targeted for treatment must be removed to expose an area within 42 inches of the points along the foundation that are closest to the footing; and
 - (2) the basement or crawl space enclosed by or containing such foundation is ventilated as follows:
 - (A) immediately following application and for at least seven days thereafter, the area must be ventilated directly to the outside of the structure;
 - (B) the minimum net area of ventilating openings must not be less than one square foot for each 150 square feet of interior floor surface of the basement or crawl space area; and
 - (C) there must be at least four vents, and each vent must be located no farther than three feet from each corner of the room.

- (i) Subsurface ground application of termiticide must not be made to soil in areas where an air circulation system is to be installed within or beneath a concrete slab or floor unless the air circulation system:
 - (1) is completely encased in concrete; or
 - (2) is constructed of an impervious material such as metal or plastic that is sealed prior to construction of a concrete slab or floor.
- (j) Subsurface ground application of termiticide must not be made to structures that have an air circulation system installed within or beneath a concrete slab or floor unless:
 - (1) all supply and return register outlets throughout the air circulation system are permanently filled and sealed to completely disable the system; or
 - (2) application is restricted to soil outside the perimeter of the concrete slab or floor, and application is made from an area outside the perimeter of the concrete slab or floor by vertical rodding, trenching or the excavation or treated backfill technique.
- (k) Subsurface ground application of liquid termiticide must not be made to structures with plenum air spaces unless application is restricted to soil outside the foundation, and application is made from an area outside the foundation by vertical rodding, trenching or the excavation or treated backfill technique.
- (l) Subsurface ground application or surface application of termiticide must not be made to exposed soil in crawl spaces that are more than eighteen inches but less than five feet in height, as measured from the ground to the underside of the floor, or basements unless:
 - (1) the entire exposed soil surface is covered with a concrete slab immediately following application (except areas where utility access panels are constructed); or
 - (2) the following measures are complied with:
 - (A) treated areas must be covered with a concrete strip or layer of untreated soil measuring at least the width of treated soil; and
 - (B) the basement or accessible crawl space must not connect with other interior areas of the structure without a separating wall or floor. The wall or floor must obstruct movement of termiticide vapor to any nontarget areas. The wall or floor must be in place for at least seven days following application. Any access doors in the wall or floor must be securely closed immediately following application; and

- (C) the basement or accessible crawl space area must be ventilated in compliance with section 19(h)(2).
- (m) Subsurface ground application or surface application of termiticide must not be made to exposed soil in crawl spaces that are eighteen inches or less in height, as measured from the ground to the underside of the floor, unless:
- (1) the entire exposed soil surface is covered with a concrete slab immediately following application (except areas where utility access panels are constructed); or
 - (2) the following measures are complied with:
 - (A) the inaccessible crawl space must not connect with other interior areas of the structure without a separating wall or floor. The wall or floor must obstruct movement of termiticide vapor to any nontarget areas. The wall or floor must be in place for at least seven days following application. Any access doors in the wall or floor must be securely closed immediately following application; and
 - (B) the inaccessible crawl space area must be ventilated in compliance with section 803-19(h)(2).
- (n) Immediately following subsurface ground application of termiticide, all drill holes must be securely plugged with concrete or mortar. Plugs made out of other materials such as plastic, wood or cork must be recessed a minimum of one inch and capped with concrete or mortar.
- (o) Re-treatment must not be made unless there is an active re-infestation of termites subsequent to a prior application as determined by the visual observation of live termites, or the sealing, extension or reconstruction of mud tubes after they have been disturbed; or there has been a disruption of the termiticide barrier due to construction, excavation, or landscaping. This requirement applies whether or not the termiticide used for re-treatment is chemically different from the termiticide previously used. When there has been a disruption of the termiticide barrier due to construction, excavation, or landscaping, re-treatment is restricted to application of the termiticide to the disrupted area only.

DIVISION 7 –PESTICIDE DISPOSAL, CONTAINERS AND EQUIPMENT

803-71. Standards for Pesticide Containers and Containment

No person shall hold, use or distribute or sell within the U.S. Virgin Islands, or deliver for transportation or transport in intra-territory commerce or between points within the U.S. Virgin Islands or between points within the U.S. Virgin Islands through any point outside the U.S. Virgin Islands, any pesticide or pesticide container, unless he or she complies fully with the requirements

of the “Federal Standards for Pesticide Containers and Containment” codified at 40 CFR Part 165, Subparts A – D, which are incorporated herein by reference, as amended and supplemented.

803-72. Cleansing and Disposal of Pesticide Containers and Disposal of Unwanted or Unusable Pesticides

- (a) No person shall dispose of pesticides, pesticide containers or equipment that holds or has held a pesticide, in a manner that causes harm or injury to persons or to the environment or a significant risk of harm, injury or damage.
- (b) No person shall dispose of pesticides, pesticides containers, or equipment that holds or has held a pesticide in a manner that is a violation of territorial or federal law.
- (c) Empty noncombustible pesticide containers must be cleansed before disposal, using the three rinse technique or other methods approved by the Department, except that containers of ready-to-use pesticides that do not require dilution must be drained only for one 30-second period.
- (d) After rinsing in accordance with the techniques described in this section of the regulations, empty noncombustible containers must be disposed of as follows:
 - (1) non-returnable containers (i.e., pesticide containers that have been made unusable through breakage, puncturing or crushing) may be disposed of in a sanitary landfill operating in accordance with department regulations or a shipped to an appropriate out-of-Territory facility, which lawfully accepts such waste; and
 - (2) returnable containers must be tightly closed to prevent leakage, the exterior cleaned and the containers returned to the supplier.
- (e) Empty combustible containers of pesticides shall be disposed of as follows:
 - (1) in a sanitary landfill operating in accordance with department regulations;
 - (2) shipped to an appropriate out-of-Territory facility, which lawfully accepts such waste;
 - (3) in a high temperature incinerator approved for such use by the Department; or
 - (4) except containers of volatile hormone-type herbicides, at the site of application, if such containers are so destroyed by the end of the day on which they are emptied. Burning shall be done in accordance with the Virgin Islands Code and the rules and regulations existing thereunder. Empty containers of volatile hormone-type herbicides shall be disposed of either in a sanitary landfill operating in accordance with Department

regulations in such manner as to prevent contamination or shipped to an appropriate out-of-Territory facility, which lawfully accepts such waste.

- (f) Pesticides containers holding, or which held, substances which are specifically listed as hazardous wastes under 40 CFR Part 261.31, 261.32 or 261.33(e) must be managed in accordance with 40 CFR Part 261.7(b)(3), in order to meet the definition of an empty container. The three-rinse technique is required regardless of which hazardous waste characteristic is the basis for listing, including reactivity, ignitability, and toxicity. The container or inner liner must be triple rinsed using a solvent that is capable of removing the commercial chemical product or manufacturing chemical intermediate which was held in the container. Cleaning may be achieved by another method that has been documented in scientific literature or through testing to be effective. If the inner liner has been removed, the container would also be considered empty.
- (g) Unwanted or unusable pesticides or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, accumulated per calendar year greater than 10 pounds of dry material or five gallons of total liquid, or greater than one kg (approximately 2.2 pounds or one quart) of acutely hazardous pesticides, shall be disposed of by:
 - (1) returning to the supplier; or
 - (2) by disposal at a hazardous waste facility approved for this use by the Department and the EPA, or at an out-of-state facility, approved by the EPA and the appropriate territorial agency; or
 - (3) by consignment to a pesticide clean-up day approved by the Commissioner.
- (h) Small quantity handlers (generators of less than 5000 kg at any time) or large quantity handlers (of 5000 or more kg at any time) can accumulate universal waste pesticides for up to one year, prior to disposal, provided that containers are dated with the earliest date upon which any universal waste was added to the container.

803-73. Reuse of Pesticide Containers

- (a) No pesticide container shall be sold or used for any purpose which involves the risk of exposure to humans or animals, including but not limited to, the storage of human or animal food or water; nor shall such containers be used for the storage of cooking utensils, dishes or clothing.
- (b) No pesticide containers shall be sold or used for any other purpose, other than for the storage of the original pesticide, unless such purpose has been specifically prescribed by the product's label, or approved by the Commissioner in writing, and the containers have been properly

decontaminated.

803-74. Identification of Commercial Pesticide Application Equipment or Vehicles Transporting Commercial Pesticide Applicator Equipment

(a) Each certified Commercial Applicator and Pesticide Business shall be provided by the Department with a set of two numbered stickers for each vehicle used in the application of restricted use pesticide or the Commercial Application of general use pesticides. These stickers shall be prominently displayed on opposite sides of each vehicle used to transport pesticides or equipment used for Commercial Applications of general use pesticides or for any application of restricted use pesticides. This sticker requirement does not apply to noncommercial-type vehicles transporting small quantities of pesticides or portable pesticide equipment if displaying the stickers will change the rating of the vehicle and thereby limit its access to certain transportation routes normally used.

DIVISION 8 – RECORDKEEPING, INSPECTIONS AND ENFORCEMENT

803-81. Records and Reports

(a) Pesticide Businesses and Pesticide Agencies

(1) Each Pesticide Business and Agency shall keep records in a manner specified by the Department. The Pesticide Business or Agency shall maintain these records on an annual basis and retain them for a minimum of three years. At a minimum, these records shall include the following:

(A) for each pesticide application required to be made by a Commercial Applicator or someone working under his supervision:

- (1) the name and address of each person for whom a pesticide was applied;
 - i. the location of the application (including the 5-digit zip code);
 - ii. the size of the area treated;
 - iii. the crop, commodity, stored product or site to which the pesticide was applied;

- iv. the time and date of the application;
- v. the brand or product name of the pesticide applied;
- vi. the EPA registration number of the pesticide applied;
- vii. the total amount of pesticide applied per location per application;
- viii. the dosage rate;
- ix. the method of application;
- x. the target organism;
- xi. the name and certification number of the Commercial Applicator that made or supervised the application; and
- xii. if applicable, the name of any Pesticide Technician who made the application and is not a Commercial Applicator.

(B) for each Pesticide Technician applying pesticides for the Pesticide Business or Agency under the supervision of a Commercial Applicator:

- (i) If the Technician met the training requirement in 803-51(c)(1) by taking a core certification or private applicator certification training class, the name and signature of the Technician, the date of the training, the name of the trainer, and the title or description of the training.
- (ii) If the Technician met the training require of 803-51(c)(2) by receiving training as an agricultural handler, the name and signature of the Technician, the date of the training, the name of the trainer and documentation showing that the trainer met EPA's worker protection standard trainer requirements, information on the EPA-approved training materials used, and the name of the Technician's employer.
- (iii) If the Technician met the training requirements of 803-51(c)(3) by taking a Department-approved Pesticide Technician training program, the name and signature of the Technician, the date of the training, the name of the trainer, and the title or description of the training.
- (iv) If the Technician met the training requirements in 803-51(c)(4), (5)

or (6) by being a Commercial Applicator for a different category, a Private Applicator, or certified as an applicator by a jurisdiction other than the Virgin Islands, the name and certification number of the applicator, the certifying authority, and the expiration date of the certification.

(2) Each Pesticide Business and Agency shall file the following annual reports in the manner prescribed by the Department no later than February 1st of each year with information for the prior year.

(A) One report shall contain the following information for each pesticide application required to be made by a Commercial Applicator or someone working under his supervision:

- (i) the EPA registration number,
- (ii) the product name,
- (iii) the quantity of pesticide used,
- (iv) the date of the application, and
- (v) the location of the application by address (including five-digit zip code).

(B) Each Pesticide Business or Agency that has imported restricted use pesticides into the Virgin Islands shall also file a report containing the following information for each imported restricted use pesticide:

- (i) the name of the restricted use pesticide,
- (ii) the EPA registration number,
- (iii) the container size,
- (iv) the number of imported containers, and
- (v) the distributor from whom the pesticide was purchased.

(3) Each Pesticide Business or Agency shall file quarterly reports in the manner prescribed by the Department regarding quantities of restricted use pesticides.

(A) For the quarters ending March 31, June 30, September 30 and December 31,

quarterly reports are due two months after the end of the quarter.

(B) For each restricted use and general use pesticide used, stocked on hand, held in storage or purchased during the quarter, the quarterly report shall include:

- (i) the name of the restricted use pesticide,
- (ii) the EPA registration number,
- (iii) the date received,
- (iv) the original quantity received, and
- (v) the quantity remaining at the end of the quarter.

(b) **Commercial Applicators.** Commercial Applicators who are self-employed or employed by a business or agency not required to be registered pursuant to section 803-38, including, but not limited to, building superintendents and employees of cemeteries or golf courses, shall keep records as described in subsection (a)(1) of this section and file reports as described in subsection (a)(2) and (3) of this section. Such records shall be maintained on an annual basis and retained for a minimum of three years.

(c) **Private Applicators.** Private Applicators shall maintain on an annual basis and retain for three years a record in the manner prescribed by the Department- that shall include the following:

- (1) records of the restricted use pesticides purchased, including the EPA registration number, the product name and quantity of the pesticide purchased, and the date purchased;
- (2) the crop treated by each such pesticide;
- (3) the method of application; and
- (4) the date of their application or applications.

(d) **Pesticide Dealers.**

- (1) Pesticide Dealers must record and maintain at each individual location, for at least three years, records of each transaction where a restricted use pesticide is distributed or sold to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities. Records of each such transaction must include the following information:

- (A) Name and address of the residence or principal place of business of the Certified Applicator to whom the restricted use pesticide was distributed or sold.
 - (B) The certification number on the certification card presented to the seller, the expiration date of the Certified Applicator's certification, and the category(ies) in which the applicator is certified relevant to the pesticide(s) sold.
 - (C) The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction, including any applicable emergency exemption or state special local need registration number.
 - (D) The quantity of the restricted use pesticide(s) distributed or sold in the transaction.
 - (E) The date of the transaction.
- (2) Pesticide Dealers that sell or offer for sale restricted use pesticides to certified Private Applicators must annually file with the Department in the manner prescribed by the Department a report containing the information required by 803-21(k)(3) – (6). The Department shall not use reports filed under this paragraph (2) for enforcement purposes.
- (e) **Inspection of Records.** All records required to be maintained pursuant to these regulations shall be made available to the Department for inspection upon request. Commercial Applicators must keep records at their principal place of business.

803-82. Inspection of Establishments and Investigations

(a) Books and Records

- (1) Pesticide Dealer Upon the request of any Department office or employee, duly designated by the Commissioner (provided the request is for the purposes of enforcing the provisions of the Act or these regulations), any producer, distributor, carrier, dealer, farm, nursery or any other person who sells, offers for sale, uses, delivers or offers for delivery any pesticide or device subject to these regulations, shall permit such officer or employee at all reasonable times to have access to and to copy:
- (A) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name and address of the consignor and consignee; or
 - (B) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or

holding of the pesticide or device.

- (2) Before undertaking an inspection under this subsection (a), the officer or employee must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Inspection of Establishments

- (1) For purposes of enforcing the provisions of these regulations, officers of the Division of Environmental Enforcement, or employees of the Division of Environmental Protection duly designated by the Commissioner, are authorized to enter at reasonable times:
 - (A) any establishment or other place where pesticides, devices or containers are produced or held for distribution, sale, or use, for the purpose of inspecting and obtaining samples of any pesticides, devices, or containers or the labeling for such pesticides, devices, or containers; or
 - (B) any establishment or other place where there is being held any pesticide the registration of which has been suspended or cancelled for the purpose of determining compliance with the requirements of these regulations.
 - (C) any establishment or other place where a violation of a requirement of these regulations or an order issued thereunder is reasonably believed to be occurring or is reasonably believed to be about to occur, for the purpose of investigating such violation or potential violation, including copying all records relating to, taking samples or seizing pesticides.
 - (D) any establishment or other place, including but not limited to any residence, business, farm, field, park, nursery, greenhouse, marine, dock or water body where pesticides are stored or used (i.e., commercial application of general use or restricted use pesticides or private application of restricted use pesticides) for the purpose of inspecting for compliance with the requirements imposed under these regulations or an order issued thereunder.
 - (E) Any establishment or other place in which the Department is conducting routine inspections in a manner designed to determine compliance or non-compliance with

these regulations or an order issued thereunder, to verify the accuracy of information submitted by applicators or dealers of commercial use and restricted use pesticides, and to verify adequacy of records and reports submitted pursuant to these regulations or an order issued thereunder.

- (2) Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are produced or held for distribution or sale, or stored or used, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples of pesticides or devices, it must be done in the presence of at least one witness and, prior to leaving the premises, the officer or employee shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, if requested, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge, if no further investigation and/or enforcement action is still pending.
- (c) Warrants. For purposes of enforcing the provisions of the Act or these regulations and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of the Act or these regulations have been violated, officers or employees duly designated by the Commissioner are empowered to obtain warrants from a judge or magistrate and to execute such warrants authorizing--
- (1) entry, inspection, search and copying of records for purposes of these regulations or an order issued thereunder;
- (2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found in the establishment which is adulterated, misbranded, not registered (in the case of a pesticide) or otherwise in violation of these regulations and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and
- (3) the seizure of any pesticide or device which is in violation of these regulations.

(d) Investigations

- (1) The Commissioner, or any officer of the department when authorized by the Commissioner, may investigate and report as to all matters within or pertaining to the powers and jurisdiction of the Department for the purpose of carrying into effect the provisions of these regulations and the rules of the Department made pursuant thereto.
- (2) To aid in the administration of this subsection, the Commissioner or any person designated by him or her may issue subpoenas in his or her name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other evidence for any hearing, proceeding or investigation conducted or to be conducted by or before the Department. Service of such a subpoena, enforcement of obedience thereto, and punishment for disobedience thereof shall be had in the manner provided by the civil practice law and rules relating to enforcement of any subpoena issued by a court of the United States Virgin Islands. In the case of hearings, proceedings, or investigations before or conducted by the Department, neither any person certified to apply pesticides nor the holder of a business registration issued pursuant to these regulations, nor an employee of such registration holder, nor an officer or stockholder in a registered corporation, when required to attend as a witness, shall be entitled to any subpoena fee or mileage. Any member of the Department or any person who may be designated hereunder by the Department to hold hearings may administer oaths to witnesses. The Department also may provide for the taking of depositions of witnesses for the purpose of any such hearing. In such case, such officer, employee or other person may administer oaths to the witnesses whose depositions are to be taken. Each deposition shall be reduced to writing and subscribed by the deponent.
- (e) Immunity of Witnesses. In any investigation, hearing or inquiry, conducted pursuant to the Act or these regulations, the Commissioner, or his deputy or other officer presiding at such investigation, hearing or inquiry, may confer immunity in accordance with title 14 of the Virgin Islands Code.

803-83. Equipment Inspection

The Commissioner or designated employees may inspect any equipment, device or apparatus used for the Commercial Application of pesticides by Commercial Applicators and may require repairs or other changes before approval is given for further use of such equipment.

803-84. Unlawful Acts

It is unlawful:

- (a) For any person to distribute or sell within the Virgin Islands, use within the Virgin Islands, or deliver for transportation or transport in intrastate commerce or between points within the Virgin Islands through any point outside the Virgin Islands any of the following:

- (1) Any pesticide which has not been registered pursuant to the provisions of these regulations, any pesticide if any of the claims made for it as part of its distribution or sale or any of the directions for its use differ in substance from the statement required in connection with its registration, or any pesticide the composition of which at the time of its distribution or sale differs from its composition as described in the statement required in connection with its registration; provided that in the discretion of the Commissioner a change in the labeling or formula of a pesticide may be made within a registration period without requiring re-registration of the product.
- (2) Except as specified in regulation authorizing alternative pesticide containers, any pesticide that is not in the registrant's or the manufacturer's unbroken immediate container that has affixed to it (and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the following information:
 - (A) The name and address of the manufacturer, registrant, or person for whom manufactured;
 - (B) The name, brand, or trademark under which said pesticide is sold; and
 - (C) The net weight or measure of the content, subject, however, to such reasonable variations as the Commissioner may permit.
- (3) Any pesticide which contains any substance or substances in quantities highly toxic to humans, as determined and listed by the Commissioner pursuant to section 803(c)(2) of the Act, unless the label shall bear, in addition to any other matter required by these regulations:
 - (A) The skull and crossbones;
 - (B) The word "poison" prominently in red, on a background of distinctly contrasting color; and
 - (C) A statement of an antidote for the pesticide.
- (4) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate, unless they have been distinctly colored or discolored as provided by Department regulations, once issued, or any other white powder pesticide which the Commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be

distinctly colored or discolored; unless it has been so colored or discolored; provided that the Commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

- (5) Any pesticide which is adulterated or misbranded.
- (6) Any device which is misbranded.
- (b) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in these regulations, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of these regulations or the Act.
- (c) For any person to use for his or her own advantage or to reveal, other than to the Commissioner or proper officials or employees of the Virgin Islands government or to the courts of the Virgin Islands in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of these regulations or the Act.
- (d) For any person to store or dispose of any pesticide, or of any container that holds or has held a pesticide, except in compliance with the rules and regulations of the Department.
- (e) For any person to distribute or sell, purchase for the purpose of re-sale, or possess for the purpose of re-sale any restricted use pesticide without a Pesticide Dealer Permit.
- (f) For a pesticide dealer to sell restricted use pesticides except to another Pesticide Dealer, the holder of a non-cancelled Purchase Permit, or a Certified Applicator.
- (g) For any person other than a Certified Applicator to purchase or possess (except for the purpose of re-sale) or use any restricted use pesticide without a Purchase Permit.
- (h) For any person other than a Certified Applicator to engage in the Commercial Application of a general use pesticide or any application of a restricted use pesticide, except as allowed by 803-31(b).
- (i) For any person or business to engage in the business of applying pesticides unless the business is registered by the Commissioner pursuant to 803-38.
- (j) For any person to remove or dispose of a seized or quarantined pesticide by sale or otherwise without the Commissioner's permission.

(k) For any person to falsify or fail to prepare, maintain or provide reports or records pursuant to these regulations, including sections 803-81 and 82.

(l) [For any person to violate any other provision of the Act or these regulations, including:

- (1) to use a registered pesticide in a manner inconsistent with its labeling.
- (2) to knowingly falsify all or part of any application or other information required to be submitted to the Department pursuant to these regulations.
- (3) to falsify all or part of any information relating to the testing of any pesticide (or any ingredient, metabolite, or degradation product thereof) including the nature of any protocol, procedure, substance, organism or equipment used, observation made or conclusion or opinion formed, submitted to the Commissioner or that the person knows will be furnished to the Commissioner or will become part of any records required to be maintained by these regulations.
- (4) to submit to the Commissioner data or other information known to be false.
- (5) to use any pesticide which is under an experimental use permit contrary to the terms of such permit.
- (6) to violate any order issued under these regulations.
- (7) to refuse to allow any entry, inspection, copying of records or authorized sampling.
- (8) To advertise a product registered for restricted use without giving the classification of the product assigned to it under these regulations.
- (9) To add any substance to, or take any substance from, any pesticide in any manner that may defeat the purpose of these regulations.

803-85. Stop Use Orders and Seizure of Pesticide and Devices.

Stop use orders and seizure of pesticides and devices are governed by sections 838 and 839 of the Act, 3 V.I.C. §§ 838 and 839.

803-86. Penalties

Administrative penalties, civil judicial sanctions and criminal sanctions are set forth in section 842 of the Act, 3 V.I.C. § 842.