

# VI PROPOSED REVISED PESTICIDE REGULATIONS



## Public Hearing

July 29, 2021

This Public Hearing is being recorded



# Introductory Remarks



**Austin Callwood**

Director

Environmental Protection Division

Department of Planning and Natural  
Resources

# Introductory Remarks



- ▶ A crucial milestone for the territory to ensure the Pesticide Program retains primacy and our rules and regulations are at least equivalent to, or no less stringent than federal pesticide law (Federal Insecticide and Rodenticide Act (FIFRA)).
- ▶ Give you an opportunity to enter remarks into the record.
- ▶ Provide your written comments until September 14, 2021.
- ▶ A copy of the proposed revisions of the rules and regulations and supporting documents are available at:
  - ▶ Charles W. Turnbull Regional Library, St. Thomas;
  - ▶ DPNR office at 45 Mars Hill in Frederiksted, St. Croix; and
  - ▶ DPNR website at <https://dpnr.vi.gov/environmentalprotection/pesticides-control-program/>

# Why the pesticide Rules and Regulations are now being revised

## General Provisions Compliance Dates

You will notice that the rules are subdivided into 8 divisions, and we will highlight parts of each division.

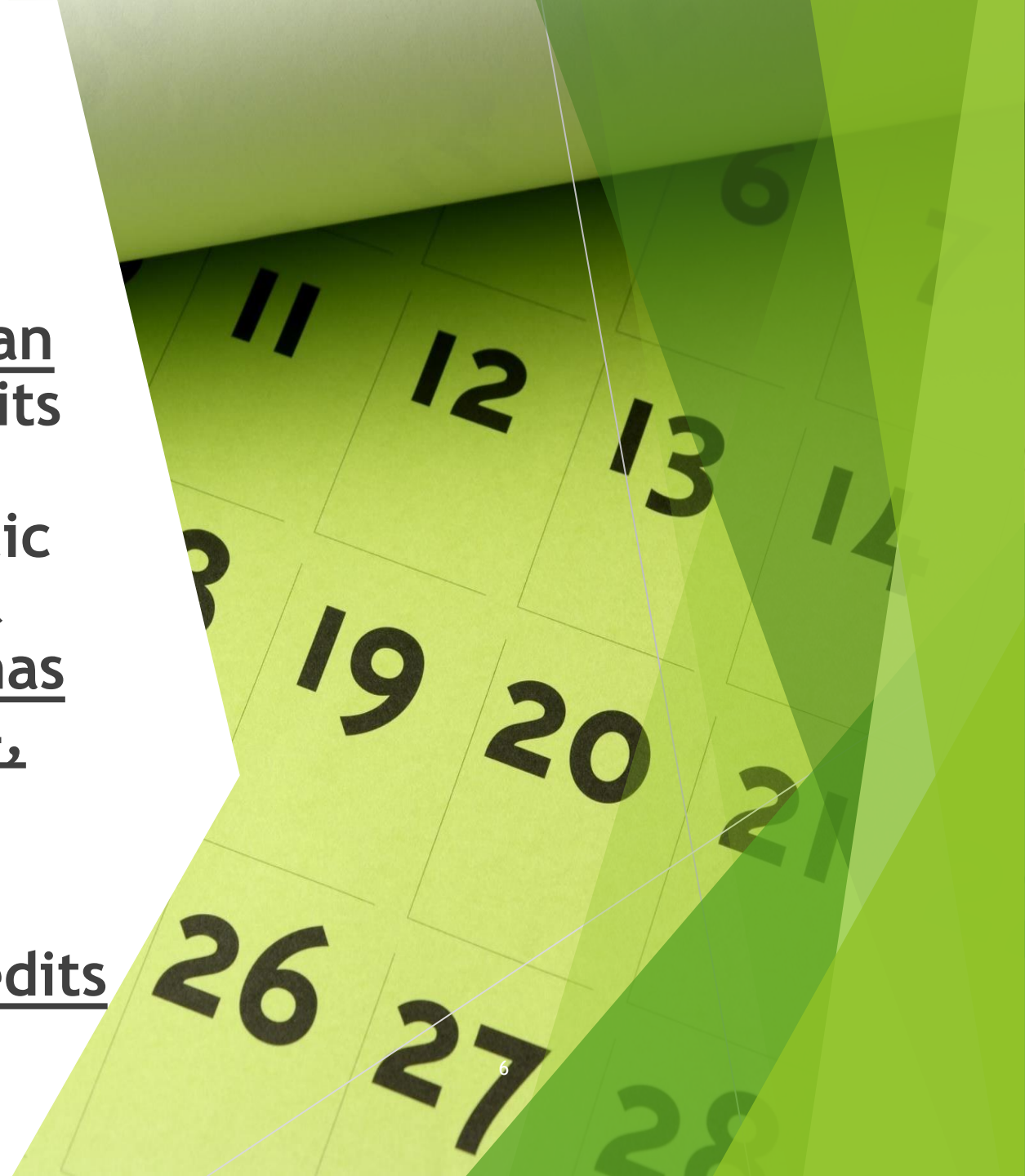
- Division 1: **Pesticide Product Registrations**
- Division 2: **Sale and Purchase of Restricted Use Pesticides (RUPs)**
- Division 3: **Pesticide Applicator Certification and Business Registrations**
- Division 4: **Requirements for Training Courses and Examinations**
- Division 5: **Pesticide Technicians**
- Division 6: **Special Rules for Lawn Applications and Termite Control**
- Division 7: **Pesticide Disposal, Containers and Equipment**
- Division 8: **Recordkeeping, Inspections and Enforcement**

# Housekeeping

- ▶ Hearing is being recorded
- ▶ Hold your questions and/or comments until the end.
- ▶ Immediately following we will accept remarks and comments.
- ▶ Please raise your hand (using the raise hand function of MS Teams) to be recognized or by writing in the chat.
- ▶ There will be 3-minute time limit for each question and/or comment.

# Important information

- ▶ The public comment period began on July 15, 2021, and due to edits made for clarification purposes after the publication of the public notice in newspaper, the normal 30-day public comment period has been extended to September 14, 2021.
- ▶ An Errata Sheet explaining the edits made is available on the DPNR website.



# Presenters

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**Legal Counsel**  
**Division of Environmental Protection**  
**Virgin Islands Department of Planning and Natural Resources**

## Leslie V. Leonard

**Environmental Program Manager**  
**Pesticides Control Program**  
**Division of Environmental Protection**  
**Virgin Islands Department of Planning and Natural Resources**

# Support Team

## Tara Glynn

**US EPA Region 2**  
**Project Officer for VI Pesticide Control Program**  
**Land, Chemical & Redevelopment Division**  
**Chemicals Management Section**

## Bruce H. Aber

**U.S. Environmental Protection Agency, Region 2**  
**Assistant Regional Counsel**  
**Office of Regional Counsel**  
**Waste and Toxic Substances Branch**

# GENERAL PROVISIONS

Scope and Purpose. See 803-1

- ▶ Requirements related to the use of pesticides, including their distribution, registration, sale, purchase, transportation, application and use. It implements the VI Statute/Code (also known as the Pesticide Control Act, 12 VIC Section 801 et seq.
- ▶ Definitions. See 803-2.
- ▶ Requirements for the Use of Pesticides. See 803-3.
- ▶ Exemptions. See 803-4.
- ▶ Proof of Financial Responsibility. See 803-5.
  - ▶ The above provisions are necessary due to incorporation of the federal certification and training requirements in 2017, changes made to the VIC in 2006, and the need to be at least as stringent as FIFRA requirements.
- ▶ Inflation Adjustment for Fees. See 803-5.
  - ▶ Designed to provide discretion to increase fees to keep up with inflation, maintain deterrent effect and promote compliance with the law.



# GENERAL PROVISIONS—Compliance Dates

- ▶ Effective date - upon approval of the Governor
- ▶ 90 days from the effective date of these regulations
  - ▶ Minimum age of at least 18 years old) for becoming a commercial applicator or certified private applicator or Pesticide Technician
- ▶ one year from the effective date
  - ▶ Business and Agency Registration (803-38)
  - ▶ The Pesticide Dealer Permit Requirements and Restrictions (803-21)
- ▶ two years from the effective date
  - ▶ Control of Termites (802-62)

# GENERAL PROVISIONS—Compliance Dates

- ▶ October 1, 2024
  - ▶ Certification & training for commercial and private pesticide applicators become invalid unless the pesticide applicator is certified under the new program (ie. these revised regulations).
  - ▶ New categories (and subcategories) for commercial and private applicators. 803-6(k)
  - ▶ Written exam standards and training requirements.
  - ▶ Reciprocity.
  - ▶ New recertification requirements.
  - ▶ Record-keeping and reporting requirements.
  - ▶ New Supervisory and training requirements for pesticide technicians.

## GENERAL PROVISIONS—Compliance Dates

- ▶ Any pesticide product registration in effect on the effective date of these regulations the expiration date shall not be affected by these regulations, provided that the registrant pays the required registration fee of \$400.



# Division 1: Pesticide Product Registration

- ▶ Registrations valid for 2 years and must be renewed every 2 years. See 803-11
- ▶ Applicants must file an Accepted Labels State Tracking & Repository (ALSTAR) or paper application for registration with the VI with the National Pesticide Information Retrieval System (NPIRS) or similar national computerized application system approved by DPNR. See 803-12(d)
- ▶ Registration Fee of \$400 biennially, as adjusted for inflation, for each pesticide product registered. See 803-12( e)
- ▶ An additional fee of \$50, as adjusted for inflation, for each modification of an existing registration. See 803-12(e)
- ▶ Late Registration Fee of \$100, as adjusted for inflation, for the renewal of each pesticide product registration. See 803-17(f)

## Division 2: Sale and Purchase of Restricted Use Pesticides (RUPs)

- ▶ **Pesticide Dealer Permits and Restrictions** (see 803-21)
  - ▶ Only Pesticide Dealers may distribute or sell any RUPs.
  - ▶ Pesticide Dealers must hold Pesticide Dealer Permit.
  - ▶ Fee of \$165 (adjusted for inflation by DPNR) for application.
  - ▶ Separate application fee required for each location in the VI.
  - ▶ Pesticide Dealer Permits expire Dec 31 of each year.
  - ▶ Permit Renewal Fee is \$165 if filed within 60 days prior to the expiration of the permit
  - ▶ \$35 late fee, adjusted for inflation, for applications filed less than 60 days prior to the expiration of the permit.

## Division 2: Sale and Purchase of Restricted Use Pesticides (RUPs)

- ▶ Pesticide Dealer shall not sell RUPs except to:  
(See 803-21(i)(1)-(3))
  - ▶ Another Pesticide Dealer
  - ▶ Holder of a Purchase Permit
  - ▶ Certified Applicator who presents his or her certification card
  - ▶ Recordkeeping requirements for Pesticide dealers. See 803-81

**In other words, you cannot purchase RUPs unless you are another pesticide dealer, a holder of a purchase permit or a certified applicator who presents his or her certification card**

- ▶ Anyone can buy or sell general use pesticides (GUPs)



## Division 2: Sale and Purchase of Restricted Use Pesticides (RUPs)

- ▶ Upon the sale by a Pesticide Dealer of an RUP for which a Purchase Permit is required, the Pesticide Dealer shall cancel the Purchase Permit as follows or as otherwise directed by the Department (See 803-21(j)):
  - ▶ Each Pesticide Dealer selling RUPs to a Purchase Permit holder shall, at the time of sale, record the date, the type of RUP, quantity purchased and purchase price on the sales invoices and on the back of the Purchase Permit. See 803-21(j)(1)
  - ▶ The Pesticide Dealer who makes the last sale that completes the total amount of the RUP authorized by the Purchase Permit shall also retain a copy of the Purchase Permit. See 803-21(j)(2)

Purchase Permits shall only be issued to the following persons authorized to apply RUPs without a certification, as identified in 803-31(b)(5) or (6): (see 803-22(b)):

- ▶ Doctors of medicine and Doctors of veterinary medicine, licensed to practice in the USVI, when applying RUPs to patients during the course of the ordinary practice of those professions; and
- ▶ Persons conducting laboratory research involving RUP

## Division 2: Sale and Purchase of Restricted Use Pesticides (RUPs)

- ▶ Record Keeping by a Pesticide Dealer of an RUP for which a Purchase Permit is not required, and for sales to certified Private Applicators of GUPs used in agricultural production, the Pesticide Dealer shall, at the time of each sale, include the following, as described in 803-21(k):
  - ▶ The name and address of the residence and principal place of business of the Certified Applicator to whom the pesticide was sold
  - ▶ 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.
  - ▶ The date of sale
  - ▶ The product name and EPA registration number of the RUP
  - ▶ The quantity purchased
  - ▶ For sales to Private Applicators, the location of the intended application (include five-digit zip code) or the billing address if such location is not known

# Division 3: Applicator Certification and Business Registration

- ▶ OVERVIEW -- Who Can Apply Pesticides?
- ▶ To apply
  - ▶ restricted use pesticides, you must be a certified (Commercial or Private) pesticide applicator in the relevant category (or working under the direct supervision of one)
  - ▶ general use pesticides commercially, you must be a certified (Commercial) pesticide applicator (or working under the direct supervision of one)
  - ▶ general use pesticides noncommercially, you don't need to be certified (e.g., applying Round Up at your house does not require certification, applying Round Up at someone else's house for money requires certification)
- ▶ To be a certified Commercial or Private Applicator you must take the requisite training course(s) and pass the requisite exam(s) to demonstrate your competency
  - ▶ There are specific topics (e.g., label and labeling comprehension) in which all certified applicators must be competent
  - ▶ For each specific category, there are additional topics in which one must be competent
- ▶ The draft regulations contain specific requirements to ensure the validity of the exam results



## Division 3: Applicator Certification and Business Registration

- ▶ A person may not engage in Commercial Application of general use pesticides (GUP) or distribution, sale or application/use of RUPs unless that person is a Certified Applicator and possesses a Certification Card issued by the Department. See 803-31 (a)
- ▶ Certification is not required for: (see 803-31(b)(1)-(6))
  - ▶ a person using GUPs or RUPs under the direct supervision of a Certified Applicator in compliance with 803-51 and 803-52
  - ▶ a person who is a handler employee using RUPs under supervision of a Private Applicator in compliance with EPA's Worker Protection Standards
  - ▶ a person selling RUPs, provided that the person is employed by a Pesticide Dealer with a valid Pesticide Dealer Permit
  - ▶ 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
  - ▶ Doctor of medicine or doctor of veterinary medicine, licensed to practice within the USVI, when applying RUPS to patients during course of ordinary practice of those professions.
  - ▶ Person conducting lab research involving RUPS.

## Division 3: Applicator Certification and Business Registration

- ▶ Commercial Applicators cannot engage in any application of RUPs or any Commercial Application of GUPs for which certification is required, except for those categories or subcategories specified in his or her certification card (except as provided for by 803-51 and 803-52 when working under the supervision of another Commercial Applicator). See 803-31(c).
- ▶ Private Applicator is authorized to apply RUPs to produce agricultural commodity on property owned or rented by him or his employer, or if done without compensation on property of another person. See 803-31(d)

## Division 3: Applicator Certification and Business Registration

- ▶ Requirements to Become a Certified Applicator (803-32)
  - ▶ Commercial Applicator 803-32(a)(1)-(4)
    - ▶ individual must be at least 18 years old at time of application for certification
    - ▶ Demonstrate competency in **core standards** for use and handling of pesticides by:
      - ▶ **attending** a Department-approved commercial applicator certification training course; and
      - ▶ **passing** a Department -approved commercial applicator certification examination on the core standards
  - ▶ Demonstrate competency in standards for the use and handling of pesticides for at least **one category or subcategory** for the commercial application of pesticides as listed in 804-42 by
    - ▶ **attending** a Department-approved commercial applicator certification training course for that category or subcategory; and
    - ▶ **passing** a Department -approved commercial applicator certification examination for that category or subcategory



## Division 3: Applicator Certification and Business Registration

- ▶ Submit a complete Department-supplied form for commercial pesticide applicator certification, including requisite accompanying documentation
  - ▶ Pay Certification Fee of \$80 (as adjusted for inflation) for commercial applicator certification regardless of the number of categories covered by the certification.
  - ▶ Proof of Financial Responsibility (See 803-32(e))
    - ▶ commercial general liability insurance on a “per occurrence” basis with a minimum limit of not less than one million dollars (\$1,000,000) for any one person per occurrence for death or personal injury; and one million dollars (\$1,000,000) for any one occurrence for property damage;
- OR
- ▶ a surety bond of comparable value.

NOTE: Pursuant to 803-36 (Reciprocity) the DPNR Commissioner may waive all or part of the training, examination and certification requirements for commercial applicators who are certified by jurisdictions other than the Virgin Islands.

## Division 3: Applicator Certification and Business Registration

### ► Requirements to Become a Certified Applicator (803-32)

#### ► Private Applicator 803-32(b)

- Individual must be at least 18 years old at the time of application for certification
- Demonstrate competency in **core standards** for use and handling of pesticides **AND** in the **application of pesticides for the purpose of producing agricultural commodities** by
  - attending a Department-approved private applicator certification training **course**: and
  - pass a Department-approved private applicator certification examination

**NOTE: An Errata Sheet has been published to indicate that Private Applicator must take two training courses (Core and Category) and two examinations (Core and Category) to become certified.**

- Submit a complete Department-approved form for private pesticide applicator certification, including requisite documentation
- Pay Certification Fee of \$80 (as adjusted for inflation) for private applicator certification

## Division 3: Applicator Certification and Business Registration

### Initial Certification 803-34

- ▶ The certification and certification card will be valid for four (4) years and shall expire on the date specified on the card. See 803-34(c)
  - ▶ Recertification shall also be valid for four (4) years. 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 by inflation). See 803-34(d)
- ▶ The Department will issue a revised certification card with the additional category but certification for an additional category or subcategory shall be valid as long as the original certification was valid and shall not change the card's expiration date. See 803-34(d)

# Division 3: Applicator Certification and Business Registration

## Commercial Pesticide Certification Renewal 803-35(a)

- ▶ Prior to the expiration of the applicator's current certification
  - ▶ Submit a Department-supplied form for commercial applicator recertification documentation
  - ▶ Pay the certification fee (\$80, as adjusted for inflation) for commercial applicators
  - ▶ Proof of Financial Responsibility requirements
  - ▶ EITHER
    - ▶ pass a Department approved core recertification examination and a Department approved examination for at least one category or subcategory
- OR
  - ▶ earn 7 Continuing Education Credits (CECs) covering core and category commercial applicator competencies through courses, meetings or seminars approved by the Department
    - ▶ 1 credit= 50 minutes of instruction

# Division 3: Applicator Certification and Business Registration

## Private Pesticide Certification Renewal 803-35(b)

- ▶ Prior to the expiration of the applicator's current certification
  - ▶ Submit a Department-supplied form for private applicator recertification documentation
  - ▶ Pay the certification fee (\$80, as adjusted for inflation) for private applicators
  - ▶ EITHER
    - ▶ pass a Department approved private applicator recertification examination
    - OR
    - ▶ earn 7 Continuing Education Credits (CECs) covering private applicator competencies through courses, meetings or seminars approved by the Department
      - ▶ 1 credit= 50 minutes of instruction



## Division 3: Applicator Certification and Business Registration

- ▶ The Department will issue a new certification card when the requirements for recertification are met (see 803-35(d)):
- ▶ The certification will be effective on the later of (see 803-35(d)(1)(A) or(B)):
  - ▶ The expiration date of the prior certification; or
  - ▶ The date the Department determines that the recertification requirements have been met and issues the new certification card.
- ▶ Failure to apply within 120 days after expiration date of certification shall require to be certified as for the first time

## Division 3: Applicator Certification and Business Registration

- ▶ Reciprocity 803-36
  - ▶ Commissioner, in his sole discretion, may waive training and certification requirements if there is a determination of shortage of Commercial Applicators in a particular category, so long as the person is certified with another state, territory, agency or Indian Tribe which has an EPA-approved program with initial certification requirements comparable with these regulations. See 803-36(a)
  - ▶ Persons requesting reciprocal certification must
    - ▶ meet the commercial certification requirements in 803-32;  
and
    - ▶ Furnish proof of his or her current certification from the relevant certifying agency;
    - ▶ Demonstrate his or her knowledge of and agree to comply with the requirements of the VI Act and VI regulations.
    - ▶ 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 ). (Currently \$20)
- ▶ Denial, Suspension or Revocation of Certified Pesticide Applicator Certification 803-37

# Division 3: Applicator Certification and Business Registration

## Business and Agency Registration 803-38

- ▶ Pesticide Business and Pesticide Agency must register every 3 years. See 803-38(a)
- ▶ Fee of \$500 (as adjusted for inflation) at the time of each registration
  - ▶ additional fee of \$50 if renewal application is filed less than 30 days before registration expiration date. See 803-38(b)
- ▶ Register and Pay Fee for each Place of Business and Each Name at Each Place of Business. See 803-38(c )
- ▶ Pesticide Businesses and Agencies must meet applicable reporting and recordkeeping requirements of 803-81. See 803-38(e)
- ▶ Proof of Financial Responsibility (See 803-38(h))
  - ▶ 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
- ▶ Commissioner may deny an application for a Pesticide Business or Pesticide Agency registration or may suspend, revoke or otherwise modify such registration. See 803-38(f)(1)-(10)

## Division 3: Applicator Certification and Business Registration

- ▶ Pesticide Business or Agency must have at least 1 employee who is a Commercial Applicator certified in the proper category in which the Business or Agency intends to engage at each location, and at least 1 employee who is a Commercial Applicator for every 5 pesticide technicians.

# Division 4: Requirements for Training Courses & Examinations

**COMMERCIAL APPLICATORS:** Requirements for Core Competency Training Courses. See 803-41

- ▶ Courses and Exams must be pre-approved by the Department. See 803-41(a)
- ▶ Topics for core competency training courses and examinations for certification and recertification must include the following: See 803-41(b)(1)-(10)
  - ▶ Label and labeling comprehension
  - ▶ Safety factors: understand measures to avoid/minimize adverse health effects
  - ▶ Environment: understand potential environmental consequences of use and misuse of pesticides
  - ▶ Pests: properly identify and effectively know how to control pests
  - ▶ Pesticides: understand characteristics of pesticides
  - ▶ Equipment: understand types of application equipment, uses, & maintenance
  - ▶ Application methods: select appropriate application methods
  - ▶ Knowledge of applicable Territorial and Federal laws and regulations
  - ▶ Knowledge of responsibilities of supervisors of Pesticide Technicians
    - ▶ recordkeeping requirements of pesticide safety training
    - ▶ use-specific instructions to Pesticide Technicians using RUPs under Direct Supervision of a Commercial Applicator;
  - ▶ Explaining the pertinent territorial and federal laws and regulations to Pesticide Technicians who use RUPs under the direct supervision of a Commercial Applicator
  - ▶ Professionalism: understand importance of maintaining chemical security of RUPS; communicating information about pesticide exposures and risks; appropriate product stewardship for Commercial Applicators



## Division 4: Requirements for Training Courses & Examinations

### **COMMERCIAL APPLICATORS:** Categories of Commercial Pesticide Application and Requirements for Training Courses and Examinations for Each Category 803-42

- ▶ Training courses and exams (for category or subcategory) must be pre-approved by the Department
- ▶ Include the following topics for each category or subcategory
  - ▶ Agricultural pest control (includes crop or livestock pest control)
  - ▶ Ornamental and turf pest control
  - ▶ **Aquatic pest control - new category**
  - ▶ Rights-of-way pest control
  - ▶ Industrial, institutional and structural pest control
  - ▶ Public health pest control
  - ▶ Regulatory pest control
  - ▶ Demonstration of research pest control
  - ▶ **Non-soil fumigation—new category (see required competencies for this category which are described in 803-42(A)(B)(9)(B)(i)-(viii))**

# Division 4: Requirements for Training Courses & Examinations

## **Private Applicators:** Requirements for Training Courses and Examinations (803-43)

- ▶ Courses and Exams must be pre-approved by Department
- ▶ Private applicator training courses and exams for certification and recertification must include the following topics:
  - ▶ Label and labeling comprehension
  - ▶ Safety
  - ▶ Environment
  - ▶ Pests
  - ▶ Pesticides
  - ▶ Equipment
  - ▶ Application Methods
  - ▶ Laws and Regulations, including understanding Worker Protection Standards in 40 CFR Part 156 and 170
  - ▶ Responsibilities for supervising Pesticide Technicians, agricultural workers and handlers
  - ▶ Stewardship
  - ▶ Agricultural pest control

## Division 4: Requirements for Training Courses & Examinations

Requirements for Approval of Training Courses and Exams. See 803-44

- ▶ All training courses for certification and recertification must be pre-approved by the Department. See 803-44(a)
  - ▶ Individual or organization conducting course must have appropriate credentials, which may include academic credits in courses to be covered by the training course or at least 3 years of veritable experience as a certified commercial pesticide applicator. 803-44(a)(1)-(2)
  - ▶ Individuals with previous enforcement record may not be eligible to conduct certification and recertification courses 803-44(a)(3)
- ▶ Course Provider Requirements to obtain approval of continuing education classes. See 803-44(b)(1)-(5)
- ▶ All examinations for certification and recertification must be pre-approved by the Department. 803-44(d)
  - ▶ Criteria for examinations must be met—see 803-44(d)(1)-(12)<sup>33</sup>

## Division 5: Pesticide Technicians

- ▶ How to Qualify as a Pesticide Technician Allowed to Work Under the Direct Supervision of a Certified Applicator. See 803-51
  - ▶ Individuals, called Pesticide Technicians, who are not Certified Applicators may be allowed to apply GUPs commercially or to mix, load, apply or otherwise use RUPs under the direct supervision of a Certified Applicator. See 803-51(a)
- ▶ Pesticide Technician must be at least 18 years old
  - ▶ except can be 16 years old if: (1) the pesticide technician is using an RUP under direct supervision of a Private Applicator who is an immediate family member; and (2) the RUP is NOT a fumigant. see 803-51(b)(1)&(2)
- ▶ Pesticide Technician must satisfy the training requirements specified in 803-51(c)(1)-(6).
- ▶ The training program must meet all of the criteria specified in 803-51(d)(1)-(3)
- ▶ The person conducting the training must meet at least one of the criteria in 803-51(d)(4)(A)-(C)
- ▶ The training materials must include the items specified in 803-51(d)(5)(A)-(Y)

## Division 5: Pesticide Technicians

- ▶ **Direct Supervision Requirements and Protection of Technicians Using Pesticides Under the Direct Supervision of a Certified Applicator. See 803-52**
  - ▶ Commercial Applicator must be certified in each category applicable to the supervised use. See 803-52(b)
  - ▶ Private Applicator may only supervise Pesticide Technicians applying pesticides for purpose of producing agricultural commodity on property owned or leased by the certified private pesticide applicator or the Private Applicators employer. See 803-52(b)
- ▶ Certified Applicator must ensure the Technician is trained in accordance with 803-51( c ) and (d) and must keep records of training. See 803-52(c)
- ▶ If Certified Applicator is working for registered Pesticide Business or Pesticide Agency, the owner or manager of the Business must keep the records of the training as required by 803-81. See 803-52(c)



## Division 5: Pesticide Technicians

- ▶ Certified Applicator must provide relevant safety information, restricted entry intervals (REI), personal protective equipment and safety equipment, as specified on the label, to Technicians using pesticides under direct supervision. See 803-52(d)
- ▶ If Certified Applicator is working for registered Pesticide Business or Pesticide Agency, the owner or manager of the Business or Agency must provide such safety information, REI and equipment. See 803-52(d)
- ▶ When label requires PPE, the Certified Applicator must ensure that
  - ▶ the PPE is clean; and
  - ▶ in proper operating condition and that the Pesticide Technician wears the PPE and uses it correctly for its intended purpose. See 803-52(e)
- ▶ Certified Applicator must ensure the Technicians has a copy of the full labeling for the pesticide used at all times during its use. See 803-52(f)
- ▶ Certified Applicator must ensure that the Technician has been instructed in the safe operation of equipment within the past 12 months PRIOR to the technician using any equipment for mixing, loading, transferring or applying pesticides.<sup>36</sup> See 803-52(g)

## Division 5: Pesticide Technicians

- ▶ Certified Applicator must ensure that before each day of use, the equipment used for mixing, loading, transferring or applying pesticides is in proper operating condition and is inspected; if worn or damaged parts or equipment are found the Commercial Applicator must ensure that it is repaired or replaced prior to use. See 803-52(h)
- ▶ Before a Pesticide Technician uses an RUP, the Certified Applicator must provide to each Technician instructions (in a manner that the Pesticide Technician understands) specific to the site and pesticide used. See 803-52(i)

## Division 5: Pesticide Technicians

- ▶ Commercial Applicator must provide on-site direct supervision when:
  - ▶ a Pesticide Technician under his or her supervision engages in subsurface ground application of termiticides, surface application to exposed soil in basements and crawl spaces, and placement in voids of masonry foundations
  - ▶ a Pesticide Technician under his or her supervision applies fumigants, except when using fumigants classified as GUPs that are applied to utility poles.
  - ▶ a Pesticide Technician applies pesticide with a label requiring on-site supervision. See 803(52)(j)(1)-(3)
- ▶ Private Applicator must provide on-site direct supervision when:
  - ▶ Technician applies pesticides with labeling requiring on-site supervision. See 803-52(k)(1)
- ▶ Technicians under supervision of Private Applicators shall not use fumigants. See 803-52(k)(2)

## Division 5: Pesticide Technicians

- ▶ Off-site direct supervision is allowed when a Technician uses pesticides that do not require on-site supervision as listed in 803-52(j)---See 803-52(m)
- ▶ During pesticide use that allows off-site direct supervision, the Certified Applicator must ensure: See 803-52(n)
  - ▶ that the Technician has means to contact the supervising Certified Applicator immediately.
  - ▶ the Supervising Certified Applicator shall be on the application site within one hour of contact by the Technician.
  - ▶ the Certified Applicator cannot provide off-site supervision for more than 3 locations at the same time.
- ▶ Commercial Applicators supervising Pesticide Technicians must create or verify the existence of the records required by 803-81(A)&(B) and must maintain access to these records at the Commercial Applicator's Principal Place of Business for 2 years from the date of the Pesticide Technician's use of the RUP or commercial application of a GUP. See 803-52(o)

## Division 6: Special Rules for Lawn Applications and Termite Control

- ▶ Lawn Application - All persons providing commercial lawn application must comply with the requirements of Section 831 of the Pesticide Act and these regulations, as applicable.
- ▶ Control of Termites 803-62(a) - (o).
  - ▶ Must be complied with starting two years after the effective date of these regulations.
  - ▶ Application must be made in strict accordance with labeling and these regulations.
  - ▶ Prior to subsurface ground application by other than the excavation or treated backfill technique, a visual inspection of the area must be made by a Commercial Applicator certified in ornamental and turf or industrial, institutional and structural pest control category(ies) to ensure that the termiticide will not move from application area into the structure.

Applications 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 or voids are filled with an impervious material that completely seals any openings and prevents termiticide from moving into the structure.

## Division 6: Special Rules for Lawn Applications and Termite Control

- ▶ Control of Termites 803-62(a) - (o) (cont)
  - ▶ All pressurized application equipment used for subsurface ground application of termiticide must be equipped with properly operating pressure gauge. Pressure must not exceed 25 pounds per square inch.
  - ▶ Two employees of the Pesticide Business must be present on premises during subsurface ground application of termiticide along the exterior of basement wall and during placement underneath a concrete slab by angled or horizontal rodding from an area outside the perimeter of the slab.
    - ▶ At first indication of any movement of termiticide into the structure, the applicator must immediately cease application and initiate cleanup.
  - ▶ Subsurface ground application of termiticide must not be made to soil at or below the level of the local water table.



## Division 6: Special Rules for Lawn Applications and Termite Control

- ▶ Control of Termites 803-62(a) - (o) (cont)
  - ▶ Subsurface ground application of termiticide must not be made to soil located within 10 feet of well or cistern as measured across the surface of the soil from the application area to where well or cistern begins to descent vertically unless the conditions in 803-62(f)(1)-(3) are met
  - ▶ 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.
  - ▶ Application of termiticides shall not be made to voids in masonry foundation unless the conditions at 803-62(h)(1) and (2) are met
  - ▶ Subsurface ground application of termiticide must not be made to soils in areas where an air circulation system is to be installed within or beneath the concrete slab or floor unless the air circulation conditions of 803-62(i)<sup>42</sup>(1)and(2) are met

## Division 6: Special Rules for Lawn Applications and Termite Control

- ▶ Control of Termites 803-62(a) - (o) (cont)
  - ▶ 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 the conditions in 803-62(j)(1) and (2) are met.
  - ▶ Subsurface ground application of liquid must not be made to structures with plenum air spaces unless the application is restricted to soils outside the foundation and application is made from an area outside the foundation by vertical rodding, trenching or the excavation or treated backfill technique.
  - ▶ Subsurface ground application or surface application of termiticide must not be made to exposed soil in crawl spaces that are more than 18 inches but less than five feet in height, as measured from the ground to the underside of the floor, or basements, unless the conditions in 803-62(l)((1)-(2) are met.
  - ▶ Subsurface ground application or surface application of termiticide must not be made to exposed soil in crawl spaces that are 18 inches or less in height, as measured from the ground to the underside of the floor, unless the conditions in 803-62(m)((1)-(2) are met.

## Division 6: Special Rules for Lawn Applications and Termite Control

- ▶ Control of Termites 803-62(a) - (o) (cont)
  - ▶ Immediately following subsurface ground application, all drill holes must be securely plugged with concrete or mortar. Plugs made of other materials such as plastic, wood or cork must be recessed a minimum of one inch and capped with concrete or mortar.
  - ▶ Re-treatment must not be made unless there is an active re-infestation of termites subsequent to a prior application as determined by 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. Where there has been disruption of the termiticide barrier due to construction, excavation or landscaping, the re-treatment is restricted to application of the termiticide to the disrupted area only.

## Division 7: Pesticide Disposal, Containers and Equipment

- ▶ Standards for Pesticide Containers and Containment 803-71
  - ▶ No person shall distribute or sell within the USVI, or deliver for transportation or transport in intra-territory commerce or between points within the USVI, 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 C.F.R. Part 165, subparts A-D, which are incorporated by reference, as amended and supplemented
- ▶ Cleaning and Disposal of Pesticide Containers and Disposal of Unwanted or Unusable Pesticides 803-72(a)-(h)
- ▶ Reuse of Pesticide Containers 803-73(a)-(b)
- ▶ Identification of Commercial Pesticide Application Equipment or Vehicles Transporting Commercial Pesticide Applicator Equipment 803-74(a)

# Division 8: Recordkeeping, Inspections and Enforcement

## Records and Reports 803-81

### ► Pesticide Businesses and Pesticide Agencies

- Must maintain records on an annual basis and retain for 3 years 803-81(a)(1)
  - At a minimum, for each pesticide application made by Commercial Applicator or someone working under his or her supervision, the records must include: **see 803-81(a)(1)(A)(1)(i)-(xii))**
    - Name & address of each person for whom a pesticide was applied; Location of the application (include five digit zip code); the size of the treated area; the crop, commodity, stored product or site to which the pesticide was applied; Time and date of application; Brand or product name of the pesticide applied; EPA registration number of the pesticide applied; The total amount of pesticide applied per location per application; Dosage rate, method of application, target organism; Name & Certification Number of the Commercial Applicator that made or supervised the application; If applicable, the name of any Pesticide Technician who made the application

## Division 8: Recordkeeping, Inspections and Enforcement

**Pesticide Businesses and Pesticide Agencies must keep records of the following: See 803-81(a)(1)(B)(i)-(iv)**

- ▶ For each Technician who met the training requirements of 803-51(c)(1) by taking a core certification or private applicator training class, and who applied pesticides for the Pesticide Business or Pesticide Agency under the supervision of a commercial applicator, records must be kept of:
  - ▶ the title or description of the Training Course, the name and signature of the Technician, the date of the training, and the name of the Trainer
- ▶ For each Technician who met the training requirements of 803-51(c)(2) by taking training as an agricultural handler, records must be kept of:
  - ▶ 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 training requirements, information on the EPA-approved training materials used, and the name of the Technician's employer.

## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ **Pesticide Businesses and Pesticide Agencies must keep records of the following:**  
See 803-81(a)(1)(B)(i)-(iv)
  - ▶ For each Technician who met the training requirements of 803-51(c)(3) by taking a Department-approved training program, records must be kept of:
    - ▶ the title or description of the Training Course, the name and signature of the Technician, the date of the training, and the name of the Trainer
  - ▶ For each Technician who met the training requirements of 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 USVI, records must be kept of:
    - ▶ The name and certification number of the applicator, the certifying authority, and the expiration date of the certification.



## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ Filing of Annual Reports by each Pesticide Business and Pesticide Agency 803-81(a)(2)(A)(i)-(v)---must be filed no later than February 1 of each year with information for the prior year
  - ▶ Report shall contain the following information for each pesticide application required to be made by the Commercial Applicator or someone working under his or her supervision
    - ▶ EPA registration number
    - ▶ Product Name
    - ▶ Quantity of Pesticide Produced
    - ▶ Date of the Application
    - ▶ Location of the Application by address (include five-digit zip code)

## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ Each Pesticide Business or Agency that has imported restricted use pesticides (RUPs) into the Virgin Islands shall also file the annual report containing the following information for each imported RUP:
  - ▶ the name of the RUP
  - ▶ the EPA registration number
  - ▶ the container size
  - ▶ the number of imported containers, and
  - ▶ the distributor from whom the pesticide was purchased

## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ Filing of Quarterly Reports by each Pesticide Business and Pesticide Agency-- 803-81(a)(3)(A)&(B)(i)-(iv)
  - ▶ Each Pesticide Business or Pesticide Agency shall file Quarterly Reports regarding quantities of RUPs:
    - ▶ For Quarters ending March 31, June 30, September 30 and December 31, the quarterly reports are due two months after the end of the quarter.
    - ▶ For each RUP and general use pesticide (GUP) used, stocked on hand, held in storage or purchased during the quarter, the quarterly report shall include
      - ▶ the name of the RUP
      - ▶ the EPA registration number
      - ▶ the date received
      - ▶ The original quantity received
      - ▶ The quantity remaining at the end of the quarter

## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ **Recordkeeping for Commercial Applicators**
  - ▶ Similar record keeping and report filing (as those required for Pesticide Business and Pesticide Agencies) are required for Commercial Applicators.
    - ▶ See 803-81(b)
- ▶ Private Applicators shall maintain on an annual basis and retain for three years the following: 803-81(c)
  - ▶ Records of the RUPs purchased, including the EPA registration number, the product name and quantity of the pesticide purchased, and the date of purchased.
  - ▶ The crop treated by each such pesticide
  - ▶ The method of application
  - ▶ The date of their application or applications

## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ **Pesticide Dealers** must record and maintain at each individual location, for at least 3 years, records of each transaction where an RUP is distributed or sold to any person. 803-81(d)(1)(A)-(D)
- ▶ Records must include:
  - ▶ Name and address of the residence or principal place of business of the Certified Applicator to whom the RUP was distributed or sold
  - ▶ 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
  - ▶ The product name and EPA registration number of the RUP distributed or sold in the transaction
  - ▶ The quantity of the RUP distributed or sold in the transaction
  - ▶ The date of the transaction

## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ **Pesticide Dealers** that sell or offer for sale RUPs to certified Private Applicators must annually file with the Department a report containing the following information: 803-81(d)(2)
  - ▶ The date of sale
  - ▶ The product name and EPA registration number of the RUP
  - ▶ The quantity purchased
  - ▶ The location of the intended application (include the five-digit zip code) or the billing address if such location is unknown
    - ▶ The Department will not use the reports filed for enforcement purposes
- ▶ **Inspection of Records:** All records required to be maintained in the USVI regulations shall be made available to the Department for inspection upon request. Commercial Applicators must keep records at their principal place of business. 803-31( e)

## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ Books and Records: Upon request by any Department officer or employee, any person who sells any pesticide or device shall permit such officer or employee at all reasonable times to have access and to copy:
  - ▶ All records showing delivery or movement or holding of such pesticide or device, including quantity, date of shipment and receipt, name and address of consignor and consignee; or in the event of 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. 803-82(a)(1)(A)and(B).
  - ▶ Appropriate credentials and a written statement as to the reason for the inspection is required. 803-82(a)(2).
- ▶ Inspection of Establishments: See 803-82(b)(1)(A)-( E) and 803-82(b)(2)
  - ▶ Warrants. See 803-82(c)
- ▶ Equipment Inspection. See 803-83



## Division 8: Recordkeeping, Inspections and Enforcement

- ▶ Unlawful Acts: See 803-84(a)-(l)—new section to mirror the VIC and also FIFRA
  - ▶ Added 803-84(a)(6)—any device which is misbranded
  - ▶ Added 803-84(l)(1)-(9) to make as stringent as federal requirements under FIFRA.

803-85—Cross Referenced Stop Use Orders and Seizure of Pesticides and Devices to the VIC sections 838 and 839

803-86—Cross Referenced Penalties to the VIC section 842.

Written comments should be submitted no later than September 14, 2021, to:

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- ▶ **WRITTEN COMMENTS BY ELECTRONIC MAIL ARE STRONGLY ENCOURAGED.** When submitting written electronic comments make sure to write in the **SUBJECT OF THE EMAIL “COMMENTS TO THE PROPOSED REVISIONS TO THE PESTICIDES RULES AND REGULATIONS”**
- ▶ comments made by mail must be postmarked no later than September 14, 2021/comments made by electronic mail must be made no later than 11:59 pm on September 14, 2021/comments delivered in person (by hard copy) must be done during DPNR’s business hour no later than September 14, 2021.
- ▶ To review documents in person - by appointment only
- ▶ Online at: <https://dpnr.vi.gov/environmentalprotection/pesticides-control-program/>

# Acknowledgements

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