

Chapter 12

PESTICIDES

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I. General Provisions

24.1201 Short title.

The act codified in this chapter shall be known and may be cited as the “American Samoa Pesticide Act of 1 979”.

History: 1979, PL 16-51, § 1.

24.1202 Definitions.

As used in this chapter:

(1) “Animal” means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

(2) Applicators.

(A) “Certified applicator” means any individual who is certified under 24.1212 through 24.1216 to use or supervise the use of any restricted use pesticide.

(B) “Private applicator” means an individual who uses or supervises the use of any restricted use pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(C) “Commercial applicator” means an individual (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any restricted use pesticide for any purpose or on any property other than as provided in subparagraph (2) (B).

(3) “Beneficial insects” means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(4) “Device” means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus or other microorganism

on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(5) “Director” means the Director of the Department of Agriculture.

(6) “Distribute” means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, pesticides in this territory.

(7) “Environment” includes water, air, land, plants and man and other animals living therein, and the interrelationships which exist among these.

(8) “EPA” means the United States Environmental Protection Agency.

(9) “FIFRA” means the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7. USC § 136 et seq.).

(10) “Insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insect comprising 6-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than 6 legs, (e.g., spiders, mites, ticks, centipedes, and wood lice).

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

(12) “Labeling” means the label and all other written, printed, or graphic matter: (A) accompanying the pesticide or device at anytime; or (B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of EPA; the United States Departments of Agriculture and Interior and Department of Health, Education, and Welfare; territorial experiment stations; territorial agricultural colleges; and other similar federal or territorial institutions or agencies authorized by law to conduct research in the field of pesticides.

(13) “Land” means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(14) “Person” means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not.

(15) “Pest” means (A) any insect, rodent, nematode, fungus, weed; or (B) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except virus, bacteria, or other micro-organism on or in living man or other living animals), which the director declares to be a pest under 24.1204.

(16) “Pesticide” means: (A) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and (B) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(17) “Pesticide dealer” means any person who distributes any restricted use pesticide or any pesticide whose use or distribution is restricted by the director.

(18) “Protect health and the environment” means protection against any unreasonable adverse effects on the environment.

(19) “Restricted use pesticide” means any pesticide or pesticide use classified by the administrator, EPA, for use only by or under the direct supervision of a certified applicator.

(20) “Territory restricted pesticide use” means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including man, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(21) “Under the direct supervision of a certified applicator” means that unless otherwise prescribed by its labeling, a pesticide is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(22) “Unreasonable adverse effects on the environment” means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(23) “Weed” means any plant which grows where not wanted.

(24) “Wildlife” means all living things that are neither human, domesticated, nor, as defined in this act, pests, including but not limited to mammals, birds, and aquatic life.

History: 1979, PL 16-51 § 1.

24.1203 Enforcing official.

This act shall be administered by the director, Department of Agriculture, hereinafter referred to as “director”.

History: 1979, PL 16-51 § 1.

24.1204 Director-Authority.

The director is authorized, after due notice and an opportunity for a hearing, to:

(1) declare as a pest any form of plant or animal life (other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals) which is injurious to health or the environment;

(2) determine which pesticides, and quantities of substances contained in pesticides, may cause unreasonable adverse effects on the environment. The director shall be guided by EPA regulations in this determination.

History: 1979, PL 16-51 § 1.

24.1205 Director-Rule-making authority.

The director is authorized, after due notice to adopt appropriate rules as necessary for the enforcement and administration of this chapter, including but not limited to rules providing for:

(1) the collection, examination, and reporting of samples of pesticides or devices under this act;

(2) the safe handling, transportation, storage, display, distribution, and disposal of pesticide and their containers;

(3) labeling requirements of all pesticides distributed in American Samoa under this chapter, provided that such rules may not impose any requirements for federally registered pesticides in addition to or different from those required pursuant to FIFRA, unless previously approved by EPA;

(4) determining which pesticides with restricted uses may be distributed only by authorized pesticide dealers;

(5) prescribing methods to be used in the application of pesticides where the director finds that the rules are necessary to carry out the purpose and intent of this chapter;

(6) the registration of pesticides used or distributed in American Samoa, consistent with § 24 of FIFRA;

(7) the issuance of experimental use permits for use of pesticides where necessary to gather information to support a registration, consistent with § 5 of FIFRA;

(8) establishment of procedures and standards of competency for the certification of pesticide applicators and of categories for certification of commercial applicators; and

(9) any other matters necessary to achieve the purposes of this act.

History: 1979, PL 16-5 1 § 1.

24.1206 Director-Rules-Labeling, registration, experimental, application.

(a) For the purpose of uniformity and in order to enter into cooperative agreements, the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and issuance of experimental use permits as established by EPA or other federal or state agencies.

(b) Rules adopted pursuant to paragraph (5) of 24.1205 may relate to the time, place, manner, methods, materials, and amounts and concentrations in connection with the application of the pesticide and may restrict or prohibit use of pesticides in designated areas during specified periods of time. These rules shall encompass all reasonable factors which the director considers necessary to prevent damage or injury by drift or misapplication to plants, or wildlife on adjoining lands; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals, or beneficial in-sects. In adopting the rules the director shall give consideration to pertinent research findings and recommendations of other agencies of the territory, the federal government, or other reliable sources. The director may, by rule, require that notice of a proposed application of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity of it, if he finds that the notice is necessary to carry out the purposes of this chapter.

History: 1979, PL I6-51 § 1.

24.1207 Director-Determination of restricted pesticide uses.

In addition to those restricted use pesticides classified by the administrator, EPA, the director may also, by rule, determine restricted pesticide uses for the territory or for designated areas within the territory. If the director determines that the pesticide (when applied in accordance with its directions for use, warnings, and cautions, and for uses for which it is registered) may cause, without additional regulatory restrictions, unreasonably adverse effects on the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticide, the pesticide shall be applied only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the director may specify. The other restrictions may include, but are not limited to, the conditions of use as provided in subsection (b) of 24.1206.

History: 1979, PL 16-51 § 1.

24.1208 Rules to be consistent with federal regulations.

Rules adopted under this act shall not permit any pesticide use which is prohibited by FIFRA and regulations or orders issued under it. Rules relating to certified applicators, special local needs registrations and experimental use permits shall not be inconsistent with the requirements of FIFRA and regulations promulgated under it.

History: 1979, PL 16-51 § 1.

24.1209 Authority to make reports.

In order to comply with §4 of FIFRA, the director is authorized to make reports to the EPA in a form and containing the information that agency may from time to time require.

24.1210 Standards of competency.

(a) Standards of competency for the certification of pesticide applicators may relate to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by the individual's certification, and shall be relative to the hazards involved. In determining standards, the director shall consider the characteristics of the pesticide formulation such as: the acute dermal and inhalation toxicity; the persistence, mobility, and susceptibility to biological concentration; the use experience which may reflect an inherent misuse or an unexpected good safety information; the relative hazards of patterns of use such as granular soil applications, ultra low volume or dust aerial applications, or air blast sprayer applications; and the extent of the intended use.

(b) Standards of competency established by the director under subsection (a) shall include at a minimum the standards established by EPA in federal regulations at 40 CFR 1 71 A-171.6, provided that the director may omit the standards established for those federal commercial applicator categories which are not adopted by the director.

History: 1979, PL 16-51 § 1.

24.1211 Certification requirements.

No individual may use or supervise the use of any restricted use pesticide unless the individual is a certified applicator; provided, that a competent individual who is not a certified applicator may use a restricted use pesticide under the direct supervision of a certified applicator.

History: 1979, PL 16-51 § 1.

24.1212 Commercial applicator's certificate-Required.

No commercial applicator may use or supervise the use of any restricted use pesticide without a commercial applicator's certificate issued by the director.

History: 1979, PL 16-51 § 1.

24.1213 Commercial applicator's certificate-Application.

Application for the commercial applicator's certificate shall be made in writing to the director on a designated form obtained from the director's office. Each application for a certificate shall contain information regarding the applicant's qualifications and proposed operations, certificate category or categories the applicant is applying for, and shall include the following:

- (1) the full name of the individual applying for the certificate;
- (2) the address of the applicant in American Samoa: and
- (3) any other information prescribed by the director.

History: 1979, PL 16-51 § 1.

24.1214 Commercial applicator's certificate-Written examination.

The applicant shall pass a written examination to demonstrate to the director his knowledge of the nature and effect of pesticides. The examination will cover at a minimum the general standards of competency in 40 CER 171.4(b) and 1 71 .6 as well as the specific standards in 40 CFR 171.4(c) for the category or categories in which the applicant desires to be certified.

History: 1979, PL 16-51 § 1.

24.1215 Commercial applicator's certificate-Issuance.

The director may issue a commercial applicator certificate to any applicant who fulfills the requirements specified in 24.1212 through 24.1215. Commercial applicator certificates shall be valid for a period of 2 years from the date of issuance unless sooner suspended or revoked by the director under 24.1220 through 24.1223. The director may renew any applicant's certificate under the category or categories for which such applicant is certified, subject to reexamination or other requirements imposed by the director to ensure that the applicator continues to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly.

History: 1979, PL 16-51 § 1.

24.1216 Private applicators.

(a) No private applicator may use or supervise the use of any restricted use pesticide without first complying with the certification requirements established by the director by rule.

(b) Certification for private applicators will at a minimum include those standards specified in 40 CFR 171.5 and 171.6.

(c) A private applicator certification issued by the director is valid for a period of 3 years from the date of issuance unless sooner suspended or revoked by the director under 24.1220 through 24.1223. The director may renew private applicator certification, subject to the applicator's compliance with procedures established by the director to ensure that certified private applicators continue to meet the requirements of changing technology and to assure a continuing level of competency to use pesticides safely and properly.

History: 1979, PL 16-51 § 1.

24.1220 Certification-Suspension or revocation.

The director may suspend, pending inquiry, for not longer than 10 days and after opportunity for a hearing may deny, suspend, revoke, or modify any provision of any certification issued under this act if he finds that the applicant or the holder of a license, permit, or certification has been convicted or is subject to a final order imposing a civil penalty under §14, FIFRA, or has committed any of the following acts, each of which is declared to be a violation of this chapter. Any certified or uncertified person shall also be subject to the penalties provided for by 24.1233 for commission of any of the following acts:

(1) made false or fraudulent claims through any media representing the effect of pesticides or methods to be utilized;

(2) used a pesticide inconsistent with the labeling, the EPA or territory registration for that pesticide, or in violation of the EPA or territory restrictions on the use of that pesticide;

(3) applied known ineffective or improper pesticides;

(4) operated faulty or unsafe equipment;

(5) operated in a faulty, careless, or negligent manner;

(6) neglected or otherwise failed to comply with the provisions of this act, the rules adopted under it, or of any lawful order of the director's;

(7) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;

(8) made false or fraudulent records, invoices, or reports;

(9) used, or supervised the use of, a restricted use pesticide without having qualified as a certified applicator according to 24.1 212 through 24.1 216;

(10) used fraud or misrepresentation in making an application for, or renewal of, a license, permit, or certification;

(11) failed to comply with any limitations or restrictions on or in a duly issued license, permit, or certification;

(12) aided or abetted a licensed or an unlicensed person to evade the provisions of this act, conspired with such a licensed or an unlicensed person to evade the provisions of this act, or allowed his license, permit, or certification to be used by another person;

(13) made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land; or

(14) impersonated any federal, or territory inspector or official.

History: 1979, PL 16-51 § 1.

24.1221 Unlawful distributions.

It is unlawful for any person to distribute in this territory any of the following:

(1) any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration period if the change will not violate any provision of FIFRA or this act;

(2) any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required by FIFRA and regulations issued under it or by the rules adopted under this chapter;

(3) any pesticide which has not been colored or discolored under § 25(c)(5) of FIFRA or rules adopted under this chapter;

(4) any pesticide in a container which, due to damage, is hazardous.

History: 1979, PL 16-51 § 1.

24.1222 Unlawful acts.

It is unlawful for any person to:

(1) distribute any restricted use pesticide to any person who is not certified or under the direct supervision of an individual who is certified to use or purchase such pesticide; provided, that the director may permit distribution to an uncertified individual for use by a certified applicator as authorized by FIFRA or EPA;

(2) detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in regulations adopted under this chapter, or to add any substance from, a pesticide in a manner that may defeat the purpose of this act or the rules adopted under it;

(3) handle, transport, store, display, or distribute pesticides in a manner so as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with those pesticides;

(4) dispose of, discard, or store any pesticides or pesticide containers in a manner so as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or to pollute any water supply or waterway; and

(5) refuse or otherwise fail to comply with the provisions of this chapter, the rules adopted under it, or of any lawful order of the director.

History: 1979, PL 16-51 § 1.

24.1223 Exemptions to penalties.

(a) The penalties provided for violations of paragraphs (1) through (4) of 24.1221 do not apply to:

(1) any carrier while lawfully engaged in transporting a pesticide within American Samoa, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the pesticides or devices;

(2) public officials of this territory and the federal government while engaged in the performance of their official duties in administering territory or federal pesticide laws or regulations;

(3) the manufacturer, shipper, or distributor of a pesticide for experimental use only by or under the supervision of an agency of this territory or the federal government authorized by law to conduct research in the field of pesticides, provided that there is a valid experimental use permit as provided for by rules adopted under this act or by EPA for that pesticide; or

(4) any person who ships a substance or mixture of substances being put through tests, in which the purpose is only to determine its value for pesticide purposes, or to determine its toxicity or other properties, and from which the user does not expect to receive any benefit in pest control from its use.

(b) No pesticide or device may be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specification or directions of the purchaser. If not so exported, all provisions of this chapter apply.

History: 1979, PL 16-51 § 1.

24.1224 Enforcement-Search warrant.

(a) For the purpose of carrying out the provisions of this chapter, the director may enter upon any public or private premises at reasonable times, in order to:

(1) have access for the purpose of inspecting any equipment used in applying pesticides;

(2) inspect or sample lands actually or reported to be exposed to pesticides;

(3) inspect storage or disposal areas:

(4) inspect or investigate complaints of in-jury to humans or land;

(5) sample pesticides being applied or to be applied;

(6) observe the use and application of a pesticide; and

(7) have access to pesticides or devices packaged and labeled for distribution and to sample the pesticides or devices and any containers or labeling for the pesticides or devices.

(b) Should the director be denied access to any land where the access was sought for the purposes set forth in this chapter, he may apply to any court of competent jurisdiction for a search warrant authorizing access to the land for those purposes. The court may, upon the application, issue the search warrant for the purposes requested.

(c) The director, with the aid and advice of the Attorney General, is charged with the duty of enforcing the requirements of this act and any rules adopted under it.

(d) The director may bring an action to enjoin the violation or threatened violation of any provision of the act or any rule adopted under this chapter in a court of competent jurisdiction of the area in which the violation occurs or is about to occur.

(e) Nothing in this chapter shall be construed as requiring the director to report minor violations of this act for prosecution or for the institution of condemnation proceedings when he believes that the public interest will be served best by a suitable notice of warning in writing.

History: 1979, PL 16-51 § 1; and 1980, PL 16-69 § 1.

Amendments: 1980 Subsection (c): deleted “or without” prior to “the aid”.

24.1225 Stop sale, use, or removal order.

When the director has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this chapter, or of any of the rules adopted, he may issue and serve a written “stop sale, use, or removal” order upon the owner or custodian of the pesticide or device. If the owner or custodian is not available for service of the order upon him, the director may attach the order to the pesticide or device, and it shall not be sold, used, or removed until the provisions of this act or rules adopted have been complied with, and the pesticide or device has been released in writing under conditions specified by the director, or the violation has been otherwise disposed of as provided in this act by a court of competent jurisdiction.

History: 1979, PL 16-51 § 1.

24.1230 Information required on records.

(a) Any distributor of pesticides may be required by the director to keep accurate records containing the following:

(1) the delivery, movement, or holding of any pesticide or device including the quantity;

(2) the date of shipment and receipt;

(3) the name of consignor and consignee; and

(4) any other information, necessary for the enforcement of this act, as prescribed by the director.

(b) The director shall have access to the records required in subsection (a) at any reasonable time to copy or make copies of those records solely for the purpose of carrying out the provisions of this act. Unless required for the enforcement of this act, the information shall be confidential and if summarized, shall not identify an individual person.

(c) Certified commercial applicators shall maintain records with respect to each application of restricted use pesticides. Commercial applicator records shall include:

(1) brand and common name of pesticide product applied;

- (2) EPA registration number;
- (3) type of formulation;
- (4) percent active ingredient;
- (5) scientific or common name of target pest, and purpose of application;
- (6) dilution rate;
- (7) total amount of pesticide used;
- (8) total area covered;
- (9) date of application;
- (10) address of location of treated site;
- (11) name of certified applicator and his certification number; and
- (12) any other information that the director considers necessary.

(d) The records required in subsection (c) shall be kept for a period of 2 years from the date of the application of the pesticide and the director shall, upon request, be furnished with a copy of those records by the certified commercial applicator.

(e) The director may by rule require commercial applicators to keep records on the use of any other pesticide.

History: 1979, PL 16-51 § 1.

24.1231 Cooperation with other agencies.

The director may cooperate, receive grants-in-aid, and enter into cooperative agreements or contracts with any agency of the federal government of this territory or its subdivisions, or with any agency of another state, in order to:

- (1) secure uniformity of rules;
- (2) register pesticides under the authority of this act and FIFRA;
- (3) cooperate in the enforcement of the federal pesticide control laws through the use of territorial or federal personnel and facilities and to implement cooperative enforcement programs including but not limited to the registration and inspection of establishments;
- (4) develop and administer territorial plans for training and for certification of certified applicators consistent with federal standards, and submit those plans to meet federal certification requirements as provided for in 4 of FIFRA; or
- (5) contract for training with other agencies for the purpose of training certified applicators.

History: 1979, PL 16-51 § 1.

24.1232 Delegation of duties.

The functions vested in the director by this act may be delegated by him to employees of the department or agents as the director may from time to time designate for those purposes.

History: 1979, PL 16-51 § 1.

24.1233 Violation-Penalties.

(a) Any person violating any provisions of this chapter or rules adopted under it is guilty of a class B misdemeanor for the 1st violation. In any instance where a person was issued a warning in writing by the director under this chapter, the person shall, upon conviction of that provision of this chapter, be guilty of a class A misdemeanor, provided that any offense committed more than 3 years after a written warning or a previous conviction shall be construed as a list offense and a class B misdemeanor.

(b) No territorial court shall allow the recovery of damages from administrative action taken or for “stop sale, use, or removal” if the court finds that there was probable cause for that action.

History: 1979, PL 16-51 § 1, and 1980, PL 16-69 § 2; 1980, PL 16-90 § 14.

Amendments: 1980 Subsection (a): deleted warning provision. Subsection (a): amended to conform with penalties provided for in Title 46, criminal Justice.

II. Insecticides

24.1250 Definitions.

As used in this chapter:

- (a) “Fungicide” means any solution or product used to inhibit the growth of fungi.
- (b) “Herbicide” means any solution or product used to destroy or inhibit any form of plant growth.
- (c) “Insecticide” means any chemical solution or product the purpose of which is to control insects in agriculture.

History: 1970, PL 11-108; 1972, PL 12-54 § 1

24.1251 Ban on DDT.

The importation, sale, or use of the chemical dichloro-diphenyl-trichloroethane, commonly known as DDT, is absolutely prohibited in American Samoa.

History: 1970, PL 11-108.

24.1252 Power of director of agriculture.

The director of agriculture may:

- (1) ban the importation of such fungicides, herbicides, and insecticides, in addition to DDT, as he finds to constitute a danger to the people, animals or crops in American Samoa;
- (2) set forth requirements for the labeling of fungicide, herbicide, and insecticide containers, so that the users of these products may be informed of their proper use, of any danger in case of misuse, and of methods for immediate treatment of persons harmed through misuse;
- (3) require that fungicide, herbicide, or insecticide vendors personally inform purchasers of these products of their proper use and dangerous potential prior to sale.

History: 1970, PL 11-108; 1972, PL 12-54 § 2.

24.1253 Age restriction on sales.

The sale of any fungicide, herbicide, or insecticide to persons under the age of 18 years is prohibited.

History: 1970, PL 11-108; 1972, PL 12-54 § 3.

24.1254 Suspension or revocation of business license.

Conviction of a vendor under 24.1255 shall constitute good cause for the suspension or revocation of his business license.

History: 1970, PL 11-108.

24.1255 Violation-Penalty.

Any person who violates any provision of 24.1250 through 24.1254, and any vendor who fails to comply with such requirements as may be set forth by the director of agriculture, shall be sentenced as for a class B misdemeanor.

History: 1970, PL 11-108, and 1980, PL 16-90 § 13.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

24.1256 Government sale of chemicals.

The director of agriculture is responsible for the purchasing, stocking, and selling of fungicide, herbicide, and insecticide distributed by the government.

History: 1984, PL 18-26 § 1.