



AGENCY OF AGRICULTURE, FOOD & MARKETS

Public Health & Agricultural Resource Management Division

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VERMONT REGULATIONS FOR CONTROL OF PESTICIDES 2022

Background Information

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides for federal regulation of pesticide distribution, sale, and use. Under FIFRA, all pesticides distributed or sold in the United States must be registered (licensed) by EPA. While FIFRA is generally enforced by the EPA, states may regulate the sale or use of any federally registered pesticide or device provided their implementing regulations either meet or exceed the federal requirements. In 1972, the EPA granted Vermont approval to enforce its own pesticide control program. In 1991, the Vermont Regulations for Control of Pesticides were promulgated.

In 2009, the EPA amended its implementing regulations under the FIFRA regarding container containment and storage. States with container containment and storage regulations were then given an opportunity to either amend their regulations to meet the new requirements or, work with the EPA in demonstrating their requirements met the federal standards. The latter option was elected by the Vermont Agency of Agriculture, Food and Markets (VAAFMM). Thereafter, in 2017, the EPA amended its regulations regarding certification and training of pesticide applicators giving states with implementing programs a deadline of 2022 to meet the new requirements. More recently, the deadline was extended to 2025. Therefore, in order to maintain jurisdictional control of its pesticide control program, VAAFMM was required to amend its regulations to either meet or exceed the new federal standards.

Over the past 30 years since Vermont first promulgated its regulations, however, there have been many changes – the creation of modern forms of communication; an enhanced understanding of the impacts of pesticide use on public health and the environment; as well as new mechanisms to safely use and store pesticides; to name a few. Accordingly, VAAFMM, and the State at large, were given an opportunity to not just amend its regulations to meet the new federal requirements but also to usher the state into the modern era in its regulation of pesticides.

Summary of Amendments

The following is a brief summary of some of the essential amendments made to the Vermont Regulations for Control of Pesticides, in accordance with Title 6 Vermont Statutes Annotated, Chapter 87. Pesticide applicators are required to comply with Federal laws and State regulations. While this summary is intended to assist persons in reading and understanding the Regulations – it is not a substitute for reading the Regulations. Applicators are responsible for fully reading and understanding the Regulations. Information contained in the Regulations supersede any conflicting information in the CORE and Subcategory manuals.

I. PESTICIDE CLASSIFICATION – Refer to Section 4 of the Regulations for detailed descriptions of pesticide classifications. The EPA classifies all registered pesticides available to consumers as either general use or restricted use for the purposes of federal regulation. Vermont recognizes federal and state restricted use pesticides as Class A. Vermont classifies any registered pesticide used, sold, distributed, or manufactured within the state into three categories known as Class A – Restricted Use Federal and State, Class B – Controlled Sale, and Class C Homeowner. The amended rule no longer classifies pesticides as “By Permit Only.”

A. Class A – Restricted Use. A pesticide can be classified as restricted use by either the Environmental Protection Agency (EPA) or the state. A state can classify a product as restricted use even if it has not been classified as restricted use by the EPA. However, the state cannot classify a product for general use that has been classified as restricted use by the EPA. Federally restricted pesticides remain the same as determined by EPA. Products classified as restricted use by

the EPA will have the "Restricted Use" statement on the product label. Products classified as restricted use by the State will not bear the Restricted Use statement on the label.

i) **Federal.** The amended rule does not change any federally restricted use pesticides.

ii) **State.** The amended rule creates a new requirement that, in determining whether a pesticide is Class A – State Restricted, the potential for drift and product label statements now be considered.

B. Class B – Controlled Sale. Class B – Controlled Sale pesticides include all turf products, excluding products containing either *Bacillus thuringiensis* or potassium fatty acids and does not meet Class A definition, and any pesticide that is for use outside of the home and not marketed as ready-to-use. Class B pesticides are no longer classified on a percent of total active ingredient basis under the amended rule.

C. Class C – Homeowner. Class C – Homeowner includes any pesticide applied in and around the home and which are marketed as ready-to-use or have total active ingredient less than 3%.

i) **Limited Percentages of Active Ingredient.** Under the amended rule, anti-fouling paint is no longer a Class C pesticide and pet supplies have been removed from this category and placed into the Class C - Unlimited Percentage category.

ii) **Unlimited Percentage of Active Ingredient.** The amended rule removes the following from the previous list: antimicrobial agents; insect repellants for human use, aerosols, insecticides containing bacillus, colorants used to

II. Licenses and Certificates – Refer to Section 3 of the Regulations for details on the requirements for licenses and certificates. In order to regulate the sale, purchase, and use of pesticides, the Vermont Agency of Agriculture (VAAF) issues certificates, licenses, and permits. These documents allow VAAF to control and closely monitor pesticide sales, use, and disposal.

A. Applicator Certificates – Regulating pesticide use includes grouping applicators into different categories, depending upon the intended use of a pesticide. An applicator becomes certified when he or she has proven competence in the legal and effective use of pesticides by passing written examinations. The amended regulations make the following changes to applicator certificates and certification: a person must be at least 18 years of age before they can apply for certification, and no person may use a restricted use pesticide without proper certification.

i) **Private Applicators.** The amended rule defines “Private Applicator” as any person who uses a non-restricted use pesticide on property owned or rented by the applicator that is residential in nature or on property owned or rented by the applicator or the applicator's employer for the production of an agricultural commodity. Private applicators may apply a pesticide to the property of a neighboring producer of an agricultural commodity, provided that the applicator receives no compensation other than the trading of personal services between the applicator and their neighbor.

ii) **Commercial Applicators.** The amended rule defines “Commercial Applicator” as a person who uses a pesticide on the land or home of another whether for remuneration or gratis under the direct supervision of a certified commercial applicator.

iii) **Non- Commercial Applicators.** The amended rule defines “Non-Commercial Applicator” as a person who uses a Class A or Class B pesticide in the course of their employment on their employer’s property.

iv) **Noncertified Applicator** The amended rule defines “Noncertified Applicator” as a person who is not certified under [the Vermont Regulations for Control of Pesticides] and uses a pesticide.

B. Dealer and Company Licenses

i) **Dealer Licenses.** Dealers of pesticides are required to be licensed with VAAFMM prior to selling or distributing any pesticide. Licensure is obtained through examination. The amended regulations make the following changes to dealer licensure: prospective dealers are limited to three opportunities to pass an examination in a 12-month period; licensed dealers are required to notify VAAFMM of a termination in employment, change in employment, or retirement; dealers licenses may be renewed without examination provided there are no changes in circumstances.

a) **Class A.** Persons seeking a Class B license must first pass an examination. Dealers holding a Class A license can sell or distribute any Class A, B, or C pesticide.

b) **Class B.** Persons seeking a Class B license must first pass an examination. Dealers holding a Class B license can sell or distribute any Class B or C pesticide.

c) **Class C.** Persons seeking a Class C license are not required to undergo examination in order to sell a Class C pesticide but must obtain a retail license.

ii) **Company License.** Company licenses are issued to any business entity which applies pesticides to the lands or homes of others for remuneration or gratis. All companies in the business of applying pesticides must be licensed. All certified commercial applicators must work for licensed companies. Company licenses do not require an examination. You must fill out a form and submit the required fee. Owners of a company license are required to ensure their employees are properly certified.

III. STANDARDS OF USE – Refer to Section 5 of the Regulations for details on the requirements regarding standards of use. All pesticide applicators, licensed companies, and dealers are required to adhere to certain standards of operation when using pesticides in Vermont. These standards of operation are designed to ensure the proper use of pesticides and to reduce unnecessary risk to human health and the environment. Among others discussed below, the amended rule prohibits the use of a federally restricted-use pesticide by anyone other than a certified applicator.

A. All Applicators and Licensed Companies. In addition to the current requirements, the amended rule now requires that applicators and licensed companies include the following on an invoice or bill: the total amount of dilution used, the certificate number of the certified applicator, any information required by the Worker Protection Standard, and post-application label safety precautions. Additionally, applicators and licensed companies will now have to maintain a 200-foot buffer when applying a pesticide to soil or vegetation around public or private wells, unless otherwise granted written permission by the owner or stated in label instructions.

B. All Applicators, Licensed Companies, and Dealers. In addition to current requirements, the amended rule requires the following: maintenance of legible labels on all containers holding a pesticide; restrictions on the re-use of a container; and provisions for service containers including construction and labeling.

C. Pollinator Protections. The amended rule now includes additional protections for pollinators. First, the rule now includes a notification requirement to apiculturists with established apiaries on-site prior to applying to flowering crops. Second, persons applying pesticides that are highly toxic to bees will now be required to: apply during periods/conditions of least exposure; include additional buffers from pollinator foraging sites; and avoid applications of fungicides to pollinator-attractive plants when in bloom.

IV. PERMITS – Refer to Section 6 of the Regulations for permit requirements. VAAFMM issues permits for certain uses of pesticides. If you think the activity you seek to perform may require a permit, do not apply a pesticide without either first consulting the Agency or applying for the appropriate permit. New among the permits for the amended regulations are the Mosquito Larvicide Permit, Mosquito Adulticide Permit, and the Terrestrial Invasive Species Control Permit.

A. Right-of-Way. In addition to current requirements, the amended rule will now require that the map of the proposed application includes surface waters, public and private water supplies, and the presence of any threatened or endangered

species. Additionally, the rule includes a requirement that, within the vegetative management plan, applicants have established practices and standards for pollinator habitat.

B. Aerial Applications. In addition to current requirements, the amended rule will now require that permit applicants demonstrate compliance with federal and state aviation rules.

C. Experimental Use. The amended rule does not make any substantive changes to this permit.

D. Bird or Animal Control. The amended rule does not make any substantive changes to this permit.

E. Golf Course. In addition to most current requirements, the amended rule will now require: that the site plan provided include a soils map and key, acreage of fairways and roughs; the location of proposed buffers, the square footage of each green, and an identification of those within 100ft of surface water. The rule will also require permit applicants to submit a long-term integrated nutrient management plan and that permittees maintain records on a daily basis.

F. Mosquito Larvicide. The amended rule creates a new Mosquito Larvicide Permit. Persons seeking to make a mosquito larvicide application must first obtain a permit. Application for a permit must be accompanied by a map of the proposed application area. Publication of notice of intent to use a mosquito larvicide required. These permits may only be issued for a maximum of five years. This permit does not apply to applications of *Bacillus thuringiensis israelensis* bits-and-dunks larvicide products on wholly-owned private property.

G. Mosquito Adulticide. The amended rule creates a new Mosquito Adulticide Permit. Persons seeking to use truck-mounted sprayers to apply mosquito adulticides will now be required to obtain a permit. Application for a permit must be accompanied by a map of the proposed application area and include an integrated pest management plan. Publication of notice of intent to use a mosquito adulticide required. All mosquito adulticide permits will be published for a 30-day comment period.

H. Terrestrial Invasive Species Control. The amended rule creates a new Terrestrial Invasive Species Control Permit. This permit will predominantly be concerned with terrestrial invasive plant species. Persons seeking to manage terrestrial invasive plant pests on property that they do not have a legal right to control will now be able to do so through VAAFM's permitting processes. Use of chemical control will require landowner permission prior to any application. These permits will be published for a 10-day public comment period.

V. NOTIFICATION – Refer to Section 7 of the Regulations for details on the requirements for notification. Due to the chemical nature and potential risk to public health, notification requirements are a key component in reducing exposure. Therefore, in addition to the current notification requirements regarding outdoor applications to turf-grass or ornamental plants by commercial or non-commercial applicators, the amended rule creates additional provisions to further aid in reducing exposure.

A. Outdoor Turf or Ornamental Applications – Condos and Apartments. The amended rule creates a new requirement that any commercial/non-commercial applicator provide a notification template to a condominium owner/manager in advance of any outdoor application to turf-grass or ornamental plants on property of condominiums or apartment buildings. New requirement that customers post a written notice in no less than 24hrs or more than 7 days in advance of application. New requirement that the applicator and/or their employer post written notice in no less than 24hrs or more than 7 days in advance of application at conspicuous points. These provisions do not apply to owner-occupied buildings.

B. Indoor Applications – Multi-Unit Residential Dwelling Unit. The amended rule creates a new requirement that owners of residential dwelling units post written notice of an application where the application is occurring inside a residential dwelling unit that is not wholly owned by the occupant and where the occupant whose dwelling unit is to be treated did not request the service.

VI. RECORDKEEPING – Refer to Section 8 of the Regulations for details on the requirements for recordkeeping. Certified applicators, licensed companies, and dealers of Class A pesticides are required to keep track of certain records. These records enable the persons maintaining them to compare the efficacy of different pesticides and rates but also,

enable third parties and members of the public to better understand the effects of pesticide use. Per federal requirements, the amended rule now includes additional recordkeeping provisions.

A. Certified Private Applicators. The amended rule will now require private applicators to maintain routine operational records for a period of at least three years for any restricted-use pesticide used. In addition to current requirements, routine operational records now include the size of the area treated; the crop, commodity, stored product, or site to which the pesticide was applied; *the time* and date of the pesticide application; the brand or product name of the pesticide applied; the total amount of the pesticide applied *per location per application*; and the name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.

B. Certified Commercial and Certified Non-commercial Applicators. The amended rule will now require certified commercial and certified non-commercial applicators to maintain routine operational records for a period of at least three years for any pesticide used. In addition to current requirements, routine operational records now include the size of the area treated; the crop, commodity, stored product, or site to which the pesticide was applied; *the time* and date of the pesticide application; the brand or product name of the pesticide applied; the total amount of the pesticide applied *per location per application*. Annual application (formerly "use") reports will continue as under the current regulations with the exception that the manufacturer no longer be included.

C. Permittees. Permitted persons will continue to maintain records as conditions of a permit as under the current regulations.

D. Licensed Companies. The amended rule will now require licensed companies to maintain routine operational records for a period of at least three years.

E. Class A Dealers. The amended rule will now require Class A dealers to maintain records of each transaction where a Class A pesticide is distributed to any person for at least three years. The records to be kept now include: the name and address of the residence or principal place of business of the certified applicator to whom the Class A pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified applicator to whom the Class A pesticide was distributed or sold for application by a certified applicator; the certification number presented to the dealer evidencing the valid certification of the certified applicator authorized to purchase the Class A pesticide; the expiration date of the certified applicator's certification; the category or categories in which the applicator is certified relevant to the pesticide sold; the product name and EPA registration number of the Class A pesticide distributed or sold *in the transaction including any applicable emergency exemption or State special local need registration number*; the quantity of the Class A pesticide distributed or sold in the transaction; the date of the transaction.

VI. CERTIFICATION STANDARDS – Refer to Sections 9 & 10 of the Regulations for details on the requirements for private and commercial pesticide applicator certification. Certification is required before a person may use any Class A pesticide in addition to certain types of applications. In line with federal requirements, persons seeking certification must, at a minimum, be at least 18 years of age, able to read and write, and competent. Competency is determined by the passage of a written examination based on the standards set in the regulations.

A. Commercial and Non-commercial Applicator Certification – Refer to Section 9. VAAFM offers certification to both commercial and non-commercial applicators. The baseline certification requirements are set by the CORE standards which, in the new amendments, mirror those of the federal standards. Once certified under the CORE standards, persons may elect to become certified in another category of their choosing after demonstrating competency in the particular category or categories. In the new amendments, VAAFM has created three additional categories and three new sub-categories. A brief description of those categories is provided below.

i) **Core Standards.** Core standards have been expanded to mirror the federal requirements.

ii) **Category 1C Apiculture.** This category applies to applicators who use or supervise the use of a pesticide in apiculture, including, but not limited to miticides.

iii) **Category 2B Terrestrial Invasive**. This category applies to applicators who use or supervise the use of a pesticide in a wide variety of settings, including but not limited to forests, sensitive ecosystems, residential, fallow cropland, predominantly targeted at the control of designated terrestrial invasive plant species.

iv) **Category 6 Rights-of-Way Pest Control**

v) **Category 7F Disinfection and Antimicrobial Pest Control**. This category applies to applicators using or supervising the use of a pesticide to treat mold or microbial growth in residential and commercial settings including commercial disinfection services.

vi) **Sub-Category Soil Fumigation**. This sub-category applies to applicators who use or supervise the use of a pesticide to fumigate soil. This is a concurrent category and must be used in conjunction with valid certification in another category.

vii) **Sub-Category Non-Soil Fumigation**. This sub-category applies to applicators who use or supervise the use of a pesticide to fumigate anything other than soil. This is a concurrent category and must be used in conjunction with valid certification in another category

viii) **Sub-Category Aerial Application**. This sub-category applies to applications of a pesticide from any aircraft for the control of pests. This is a concurrent category and must be used in conjunction with valid certification in another category.

B. Private Applicator Certification – Refer to Section 10. VAAFM offers certification to private applicators. The baseline certification requirements are set by the CORE standards which, in the new amendments, mirror those of the federal standards. Once certified under the CORE standards, private applicators may elect to become certified in another sub-category of their choosing after demonstrating competency in the particular sub-category. In the new amendments, VAAFM has created three new sub-categories. A brief description of those categories is provided below.

i) **Core Standards**. Core standards have been expanded to mirror the federal requirements.

ii) **Non-soil Fumigation**. This sub-category applies to applicators who use or supervise the use of a pesticide to fumigate anything other than soil. This is a concurrent category and must be used in conjunction with valid certification in another category

iii) **Soil Fumigation**. This sub-category applies to applications of a pesticide from any aircraft for the control of pests. This is a concurrent category and must be used in conjunction with valid certification in another category.

iv) **Aerial**

VI. TRANSPORTATION AND STORAGE – Refer to Section 11 of the Regulations for details on the requirements for persons storing and transporting pesticides. Transportation and storage of pesticides pose risks to both public health and the environment. The amended rule includes additional safety precautions to ensure the safe transportation and storage of pesticides.

A. Transportation. The amended rule includes a heightened standard to ensure the safe transportation of pesticides. Specifically, it requires that applicators and dealers ensure containers are secured during transportation so they may not *shift, become punctured, or otherwise compromised*.

B. Storage of Pesticides (non-bulk). The amended rule requires new standards for the storage of non-bulk pesticides. For example, the amended rule requires that all applicators and Class A and B dealers store pesticides in accordance with label instructions, maintain legible labels on containers, and store pesticide containers inside and in a secure manner to prevent unauthorized access. Further, the rule requires that storage rooms have smooth floor surfaces made of sealed concrete or plastic absent containment, signage indicating the storage of pesticides, proper ventilation; and proper lighting.

VII. STORAGE OF BULK PESTICIDE – Refer to Section 12 of the Regulations for details on the requirements for storage of bulk pesticide. In 2009, the EPA amended its regulations regarding secondary containment of liquid bulk

pesticides and storage of dry bulk and liquid bulk pesticide. In cooperation with EPA, VAAFM adopted many of the changes. However, the requirements are now incorporated into the rule.

A. Dry Bulk Pesticide. The amended rule will now require that dry-bulk storage containers be placed on pallets or on a raised concrete platform.

B. Liquid Bulk Pesticide. The amended rule will now require a timeframe and method – “immediately upon detection, using brooms or manually activated pumps” – for the recovery of a discharge of liquid bulk pesticide.

C. Prefabricated Facilities. The amended rule will now require that manufacturers of prefabricated facilities provide a statement of chemical compatibility upon request by VAAFM.

VIII. DISPOSAL. Refer to **Section 13** of the Regulations for details on the requirements for the disposal of pesticides and pesticide containers. Previously located within another Section of the old rule, the amended rule creates this new Section for clarity and adds additional provisions for the management of pesticide containers prior to disposal. Specifically, the amended rule requires that unused or unwanted pesticides being stored prior to disposal, and all pesticide containers that have not been rinsed, be kept in a secure enclosure and maintained to prevent deterioration, unauthorized use, mishandling, loss, contamination, and risk to public health.