

Agricultural and Veterinary Chemicals (Control of Use) Regulations

Exposure Draft

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Victoria

Agricultural and Veterinary Chemicals (Control of Use) Regulations

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1 Objectives

The objectives of these Regulations are—

- (a) to prescribe the records to be made and kept by users and sellers of certain chemical products; and
- (b) to prescribe requirements for labels and advice notes accompanying certain veterinary chemical products sold by veterinary practitioners for the treatment of stock; and
- (c) to prescribe information to be provided in relation to certain agricultural spraying to be carried out on land near schools, hospitals, aged care services or children's services; and
- (d) to prescribe the equipment to be used when carrying out aerial spraying; and

- (e) to prescribe chemical products to be used in accordance with instructions on a permit or a label; and
- (f) to prohibit the possession of certain agricultural chemical products; and
- (g) to prescribe other matters authorised by the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**.

2 Authorising provisions

These Regulations are made under sections 27, 45, 47 and 76 of the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**.

3 Commencement

These Regulations come into operation on 23 July 2017.

4 Revocation

The Agricultural and Veterinary Chemicals (Control of Use) Regulations 2007¹ are **revoked**.

5 Definitions

In these Regulations—

aged care service has the same meaning as it has in the Aged Care Act 1997 of the Commonwealth;

Agvet Code of Victoria has the same meaning as it has in the **Agricultural and Veterinary Chemicals (Victoria) Act 1994**;

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth;

children's service has the same meaning as it has in the **Children's Services Act 1996**;

complex dosage regime means a dosage regime that a veterinary practitioner determines is necessary to provide separate written instructions for;

hand-operated device means a small portable applicator that can be carried and operated manually;

home garden product means an agricultural chemical product that is—

- (a) packaged and supplied to the general public for use in and around dwellings; and
- (b) specified, on a label approved by the APVMA, for use in the home garden;

hormonal growth promotant means a veterinary chemical product containing oestrogenic, androgenic or gestagenic activity to enhance growth or production in bovines and bubalines;

hospital means the following hospitals within the meaning of the **Health Services Act 1988**—

- (a) a public hospital; or
- (b) a denominational hospital; or
- (c) a private hospital; or
- (d) a multipurpose service; or
- (e) a day procedure centre;

Note

Each type of hospital referred to above is defined in the **Health Services Act 1988**. A public hospital includes a ***public health service*** within the meaning of that Act.

household product means any chemical product, packaged and supplied to the general public—

- (a) for use in controlling a pest associated with a dwelling; or
- (b) for the treatment of a companion animal or the animal's housing;

mister means spraying equipment that uses air for dispersing the spray and includes the following (but does not include air assisted boom sprayers or twin fluid nozzle sprayers)—

- (a) mist blowers;
- (b) orchard sprayers;
- (c) air blast sprayers;
- (d) air shear sprayers;
- (e) any other spraying equipment that produces a droplet size spectrum that is classified as fine or very fine under ANSI/ASAE S572.1, Spray Nozzle Classification by Droplet Spectra: American Society of Agricultural and Biological Engineers, as published from time to time;

registered veterinary chemical product means a veterinary chemical product registered under Part 2 of the Agvet Code of Victoria;

Schedule 4 Poison has the same meaning as it has in section 4(1) of the **Drugs, Poisons and Controlled Substances Act 1981**;

Schedule 7 Poison has the same meaning as it has in section 4(1) of the **Drugs, Poisons and Controlled Substances Act 1981**;

school has the same meaning as it has in the **Education and Training Reform Act 2006**;

spraying equipment means any equipment or machine for spreading, spraying or dispersing an agricultural chemical product;

the Act means the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**;

unregistered veterinary chemical product means a veterinary chemical product that is not registered under Part 2 of the Agvet Code of Victoria;

veterinary practitioner means a person who is registered under Part 2 of the **Veterinary Practice Act 1997**.

6 Records of use of agricultural chemical products

- (1) This regulation does not apply—
- (a) in relation to the use of a household product or a home garden product that is applied by hand or by using a hand-operated device; or
 - (b) to a person who—
 - (i) uses an agricultural chemical product for which the person holds a licence as an authorised user of that product under Division 2 of Part 7 of the **Public Health and Wellbeing Act 2008**; and
 - (ii) uses the product in, or in the grounds associated with, a dwelling or a commercial building other than a building used for primary production or the handling of agricultural commodities; or
 - (iii) uses an agricultural chemical product to clean a swimming pool or a spa.
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- (2) A person who uses an agricultural chemical product must, within 48 hours of using that product, cause an accurate written record to be made of—
- (a) the trade name of the product; and
 - (b) the date of use; and
 - (c) the rate of application of the product or information to allow calculation of rate of application; and
 - (d) the crop or commodity to which, or the situation in which, the product was applied; and
 - (e) the specific location at which the product was used; and
 - (f) in the case of a product applied by being sprayed outdoors, the wind speed and direction at the time the product was used; and
 - (g) the name and contact details of the person spraying, spreading or dispersing the product; and
 - (h) if applicable, the name and contact details of the person supervising such spraying, spreading or dispersing; and
 - (i) if applicable, the name and contact details of the person for whom the spraying, spreading or dispersing of the product was carried out.

Penalty: 10 penalty units.

- (3) A person who uses an agricultural chemical product must keep all records required to be made under subregulation (2) for a period of 2 years after use of the product.

Penalty: 10 penalty units.

7 Records of use of veterinary chemical products

- (1) This regulation applies to the use of a veterinary chemical product that—
 - (a) is a Schedule 4 Poison for the treatment of a stock animal by a person other than a veterinary practitioner; or
 - (b) in respect of which a withholding period applies; or
 - (c) is a hormonal growth promotant.
- (2) A person who uses a veterinary chemical product must, within 48 hours of using that product, cause an accurate written record to be made of—
 - (a) the trade name of the product; and
 - (b) the date of use; and
 - (c) the species and location of the animal; and
 - (d) any identification number (if known) or a description or name of the animal that distinguishes it from any other animal in the herd or flock of the animal; and
 - (e) the date that the animal was first treated with the product; and
 - (f) the date of each subsequent treatment of the animal with the product; and
 - (g) the quantity of the product used for each treatment of the animal.

Penalty: 10 penalty units.

- (3) A person who uses a veterinary chemical product must keep all records required to be made under subregulation (2) for a period of 2 years after use of the product.

Penalty: 10 penalty units.

8 Records of sale or use of veterinary chemical products by veterinary practitioners

- (1) This regulation applies to the sale or use of a veterinary chemical product for the treatment of a stock animal that—
 - (a) contains a substance that is a Schedule 4 Poison; or
 - (b) is an unregistered veterinary chemical product; or
 - (c) is a registered veterinary chemical product that is sold without a label approved by the APVMA; or
 - (d) is a registered veterinary chemical product sold for use other than in accordance with the label approved by the APVMA; or
 - (e) in respect of which a withholding period applies.
 - (2) A veterinary practitioner must, within 24 hours of selling or using a veterinary chemical product for the treatment of a stock animal, cause an accurate written record to be made of the following—
 - (a) the name of the product and the date the product was sold or used;
 - (b) the directions for use of the product;
 - (c) the name and address of the person to whom the product was sold;
 - (d) in the case of an unregistered veterinary chemical product, the name of the active constituent, the concentration and form in which the product was sold or used;
 - (e) the amount of the product sold or used;
 - (f) the species of animal treated or intended to be treated;
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- (g) the location of the animal treated or intended to be treated;
- (h) the withholding period (if any) for the product.

Penalty: 10 penalty units.

- (3) A veterinary practitioner who sells or uses a veterinary chemical product must keep all records required to be made under subregulation (2) for a period of 2 years after sale or use of the product.

Penalty: 10 penalty units.

9 Offences involving labelling requirements for veterinary chemical products

For the purposes of section 18(1)(b) of the Act—

- (a) the prescribed class of veterinary chemical products is all veterinary chemical products; and
- (b) the prescribed requirement is that a veterinary chemical product must be accompanied by—
 - (i) a label approved by the APVMA for the treatment of a species of animal specified on the label in accordance with the directions on the label; or
 - (ii) in the case of a veterinary chemical product sold by a veterinary practitioner for a use that does not accord with a product label approved by the APVMA, a label or advice note that complies with regulation 10; or
 - (iii) in the case of a veterinary chemical product sold in bulk quantities, an advice note that complies with regulation 10; or

- (iv) if a complex dosage regime applies in the case of a veterinary chemical product sold, an advice note that complies with regulation 10.

10 Labels and advice notes accompanying veterinary chemical products

- (1) This regulation applies to a veterinary chemical product used for the treatment of a stock animal that—
 - (a) contains a substance that is a Schedule 4 Poison; or
 - (b) is an unregistered veterinary chemical product; or
 - (c) is a registered veterinary chemical product that is sold without a label approved by the APVMA; or
 - (d) is a registered veterinary chemical product sold for use other than in accordance with a label approved by the APVMA.
 - (2) A label or advice note accompanying a veterinary chemical product sold by a veterinary practitioner for the treatment of a stock animal must include the following particulars—
 - (a) the business name, address and telephone number of the veterinary practitioner;
 - (b) the date the product was sold;
 - (c) the species and type (breed, age and sex) of the animal to be treated;
 - (d) the directions for treating the animal with the product;
 - (e) the withholding period for the species of animal to be treated or, if no such period applies, the statement "Nil withholding period required";
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- (f) the batch number of the product and its expiry date (if known);
 - (g) in the case of a registered veterinary chemical product, the name of the product unless it is sold in a container bearing the manufacturer's label;
 - (h) in the case of an unregistered veterinary chemical product, the name of the active constituent and the concentration of the active constituent.
- (3) A label under subregulation (2) must be attached to each container of the product sold.
 - (4) An advice note under subregulation (2) must be supplied to the buyer before treatment of the animal using the product commences or at the time of the initial treatment.

11 Withholding periods on labels or advice notes accompanying a veterinary chemical product

- (1) A veterinary practitioner must ensure that the label or advice note supplied by the veterinary practitioner that accompanies a veterinary chemical product sold by the veterinary practitioner must specify a withholding period no less than the period which is appropriate for the circumstances for which the product is sold contained in any directions specified on the label or advice note approved by the APVMA and issued by the manufacturer of the product.
- (2) Despite subregulation (1), the veterinary practitioner must ensure that the label or advice note issued by the veterinary practitioner that accompanies a veterinary chemical product sold by the veterinary practitioner—
 - (a) for an unregistered veterinary chemical product; or

(b) for a registered veterinary chemical product sold with a label or advice note that contains instructions from the veterinary practitioner that differ from the directions on the label or advice note approved by the APVMA and issued by the manufacturer of the product—
specifies a withholding period which is sufficient to ensure that any stock or produce from stock treated with that product will not be contaminated at the end of that period.

12 Notification of agricultural spraying near services

(1) An occupier of land who employs or contracts a person to carry out agricultural spraying of an agricultural chemical product by an aircraft or mister on land within 200 metres of a school, hospital or premises from which an aged care service or children's service is provided, must at the time the person is employed or contracted, advise the person in writing of the details of the location of that school, hospital, premises or service.

Penalty: 15 penalty units.

(2) A person who is employed or contracted to carry out agricultural spraying of an agricultural chemical product by an aircraft or mister on land in accordance with subregulation (1) must, not less than 24 hours before spraying is carried out, provide to the occupier of the land—

- (a) the trade name of the proposed agricultural chemical product to be sprayed; and
- (b) the proposed time, date and duration of spraying.

Penalty: 15 penalty units.

- (3) An occupier of land who intends to have agricultural spraying of an agricultural chemical product by an aircraft or mister on land within 200 metres of a school, hospital or premises from which an aged care service or children's service is provided must make every reasonable effort to inform the principal of the school, the site manager of the hospital or premises from which an aged care service is provided or the person in charge of the children's service, of the following information at least 12 hours before spraying is carried out—
- (a) the trade name of the agricultural chemical product to be sprayed;
 - (b) the location of the proposed spraying;
 - (c) the proposed time, date and duration of spraying.

Penalty: 20 penalty units.

13 Prescribed chemical products to be used in accordance with instructions on label or permit

For the purposes of section 19(4) of the Act, the prescribed chemical products are agricultural chemical products, not including home garden products, which—

- (a) are Schedule 7 Poisons; or
- (b) contain atrazine; or
- (c) contain metham sodium; or
- (d) contain an ester formulation of—
 - (i) (4-chloro-2-methyl phenoxy) acetic acid (MCPA); or
 - (ii) 2, 4-dichlorophenoxy acetic acid (2, 4-D); or

(iii) 4-(2, 4-dichlorophenoxy) butyric acid (2, 4-DB); or

(iv) triclopyr.

14 Offence to possess certain agricultural chemical products

(1) Subject to subregulation (2), a person must not possess an agricultural chemical product that contains any of the following—

- (a) arsenic (other than arsenic used to treat wood);
- (b) fenthion;
- (c) fenthion-ethyl;
- (d) parathion;
- (e) parathion-ethyl;
- (f) parathion-methyl;
- (g) strychnine.

Penalty: 15 penalty units.

- (2) Subregulation (1) does not apply to a person who possesses an agricultural chemical product—
- (a) that is stored at a facility for its disposal; or
 - (b) that is stored whilst in transit to a facility for its disposal; or
 - (c) for use in accordance with a permit issued under Schedule 1 to the Act.

15 Prescribed class of chemical product requiring licence

For the purposes of section 30(1)(b) of the Act, the prescribed class of chemical product is all agricultural chemical products.

16 Aerial spraying equipment

A person must not carry out aerial spraying unless any one or more of the following circumstances applies—

- (a) a smoke generating device is used at ground level at or near the point of spraying immediately before and during spraying;
- (b) the aircraft is fitted with a smoke generating device that is operated immediately before and during spraying;
- (c) a windsock is in operation and is clearly visible to the pilot at ground level at or near the point of spraying immediately before and during spraying;
- (d) an automatic weather station is located at or near the point of spraying and information about the wind speed and direction is available to the pilot immediately before and during spraying;
- (e) the pilot maintains continuous radio communication before and during the spraying with a ground-based person near the point of spraying who uses equipment to measure the wind speed and direction.

Penalty: 15 penalty units.

17 Testing of stock or agricultural produce at the expense of the owner

- (1) For the purposes of section 56(2)(e)(i) of the Act, the reasons for requiring testing of stock to be carried out at the expense of the owner are that, at any time during the period of 2 years before the giving of the notice for the testing, the owner—

- (a) has sold or consigned for slaughter or is reasonably suspected of having sold or consigned for slaughter contaminated stock; or
 - (b) has been found guilty of an offence against section 19(1), (3) or (6) of the Act in relation to the use of a veterinary chemical product; or
 - (c) has been found guilty of an offence against section 50(4) of the Act in relation to any land on which any stock to be tested has been kept during that period; or
 - (d) has been found guilty of an offence against the **Drugs, Poisons and Controlled Substances Act 1981** or any regulations made under that Act in relation to the use or possession of a Schedule 4 Poison that was prescribed for use in relation to stock.
- (2) For the purposes of section 56(2)(e)(i) of the Act, the reasons for requiring testing of agricultural produce to be carried out at the expense of the owner are that, at any time during the period of 2 years before the giving of the notice for the testing, the owner—
- (a) has sold or consigned for sale, or is reasonably suspected of having sold or consigned for sale, contaminated agricultural produce; or
 - (b) has been found guilty of an offence against section 19(1), (3) or (6) of the Act in relation to the use of an agricultural chemical product; or
 - (c) has been found guilty of an offence against section 50(4) of the Act; or
 - (d) has been found guilty of an offence against section 52(4) of the Act.
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18 Ground for refusing to grant an authority

For the purposes of clause 3(4)(b) of Schedule 1 to the Act, the prescribed ground is that the chief administrator is not satisfied that the applicant for the authority has relevant training to the satisfaction of the chief administrator.

Endnotes

¹ Reg. 4: S.R. No. 82/2007.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2016 is \$155.46.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Table of Applied, Adopted or Incorporated Matter

The following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2014.

Statutory rule provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Regulation 4, definition of <i>mister</i>	ANSI/ASAE S572.1, Spray Nozzle Classification by Droplet Spectra, published by the American Society of Agricultural and Biological Engineers on 1 March 2009, and reaffirmed January 2014	The whole