

New Rule Changes to Hawaii Administrative Rules Chapter 4-66 as Required by Act 45 (Bill 3095)

Hawaii Department of Agriculture

Pesticides Branch

December 2018

New Laws and Rules

- ▶ **ACT 045**, Senate Bill 3095 amends Hawaii Revised Statutes (HRS)

Approved by the Governor
on **JUN 13 2018**

THE SENATE
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

ACT 045
S.B. NO.

3095
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Chapter 149A, Hawaii Revised Statutes, is
- 2 amended by adding a new part to be appropriately designated and
- 3 to read as follows:

- ▶ Proposed rule changes would amend Hawaii Administrative Rules Chapter 4-66 (**HAR 4-66**)

Amendment and Compilation of Chapter 4-66
Hawaii Administrative Rules

_____, 2018

1. Chapter 4-66, Hawaii Administrative Rules, entitled "Pesticides" is amended and complied to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 6

DIVISION OF PLANT INDUSTRY

CHAPTER 66

PESTICIDES

ACT 045, HAR 4-66

Effective January 1, 2019

1. Post-Application reporting of Restricted use pesticide use
2. 100 foot application buffer zones arounds schools for RUPs
3. Can no longer use pesticides that contain Chlorpyrifos after Dec. 31, 2021 (apply by permit until then)

ACT 045, HAR 4-66-62

149-B Post-Application Reporting of Pesticide Use

- ▶ Applies to ALL users of Restricted Use Pesticides (RUP's)
- ▶ Must be submitted to Department of Agriculture no later than 30 days at the end of each calendar year.
- ▶ Report will be for an entire year
 - ❖ Ex. January 1 thru December 31
- ▶ First reports will be due by January 30, 2020 for reporting year 2019
 - ❖ Annual reports will be due by January 30 every year after

ACT 045

For each RUP the Report Must Include:

1. Federal and State Registrations or Permit Numbers
 - ❖ Federal registration = EPA Reg. #
 - ❖ State Registration = HI does not have one
 - ❖ Permit Number = Experimental Use Permits, Annual Use Permits
2. Commercial Product Name
3. Active Ingredient (s)
4. Total Quantity Used
5. General Description of the geographic location at a minimum
 - ❖ Tax Map Key (TMK)
6. Date of Application

EXAMPLE:

STATE OF HAWAII
Department of Agriculture

ACCEPTED
LICENSE NO. **9805.112**

RESTRICTED USE PESTICIDE
TOXIC TO FISH, MAMMALS, AND AQUATIC ORGANISMS
FOR RETAIL SALE TO AND USE ONLY BY CERTIFIED APPLICATORS OR PERSONS UNDER THEIR DIRECT SUPERVISION, AND ONLY FOR THOSE USES COVERED BY THE CERTIFIED APPLICATOR'S CERTIFICATION.

GROUP 6 INSECTICIDE

Abamex™
Miticide/Insecticide

ACTIVE INGREDIENT:
Abamectin (CAS No.71751-41-2):.....2.0%*

OTHER INGREDIENTS:.....98.0%
TOTAL:.....100.0%

*Contains 0.15 pounds Abamectin per gallon.
Contains VOC ≤20% EP; qualifies as "Low VOC" under California regulations

KEEP OUT OF REACH OF CHILDREN
CAUTION
Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle.
(If you **DO NOT** understand the label, find someone to explain it to you in detail.)
SEE INSIDE LABEL BOOKLET FOR ADDITIONAL FIRST AID AND PRECAUTIONARY STATEMENTS

For Chemical Spill, Leak, Fire, or Exposure, Call CHEMTREC (800) 424-9300
For Medical Emergencies Only, Call (877) 325-1840

EPA Reg. No. 228-734

Net Contents
1 Gal. (3.78 L)

Manufactured for
Nufarm Americas Inc.
11901 S. Austin Avenue
Alsip, IL 60803

EPA Est.No. 70815-GA-001

In case of an Experimental Use Permit:

EXAMPLE:

OPTIGARD FLEX LIQUID WSG ANT BAIT

EPA Reg. No. 100-1306

FOR EXPERIMENTAL USE ONLY
Under Hawaii State EUP-18-01

Issue Date: October 12, 2018

Expiration Date: December 31, 2018

HAR 4-66-62

For each RUP, the Report Will ALSO Include:

1. Applicator's name, email, and phone
2. Applicator's certification number and category
3. Reporting Year
4. County
5. Total area covered/Units treated
6. Items covered in RUP Recordkeeping (possibility)

RUP Use Annual Reporting

- ▶ Reporting forms will be available on the HDOA Pesticides website by January 1, 2019
 - ▶ <http://hdoa.hawaii.gov/pi/pest/pesticide-forms/>
- ▶ Employers may submit on behalf of an applicator, but the APPLICATOR will ultimately be held responsible for reporting
- ▶ ALL applicators should submit, even if they are not using RUPs
 - ▶ Email stating name, certification number, and that they did not use RUPs from January 1 - December 31, year date
- ▶ Potential penalty for not submitting report:
 - ▶ Up to \$500

DRAFT FORM for Annual RUP Reporting

[illegible]

Submit Reports to:

❖ Email: hdoa.pestreport@hawaii.gov

❖ **Email forms** strongly preferred

(Reports may be due by Jan. 30 but that doesn't mean you can't submit monthly)

ACT 045, HAR 4-66-62

HDOA Public Reports

- ▶ The Department shall produce a summary from information submitted...which includes:
 - ❖ FOR EACH COUNTY:
 1. Amount of area each RUP was applied
 - ❖ FOR EACH RUP:
 1. Federal and state registrations/permit numbers
 2. Commercial product names
 3. Active ingredients
 4. Total quantities used
- ▶ Reporting form will be available on HDOA's website for public use
- ▶ The form that is submitted will be for departmental use only and will not be available for public consumption; only the aggregated data will be available

ACT 045, HAR 4-66-64.2

Buffer Zones

- ▶ Effective January 1, 2019 no person shall apply Restricted Use Pesticides on or within 100 feet of school property during normal school hours.
 - ❖ Does not apply to whole structure fumigation
- ▶ School is defined as any public or private preschool, kindergarten, elementary, intermediate, middle, secondary or high school.
 - ❖ Excludes Universities
- ▶ Normal school hours are defined as Monday thru Friday from 7:00 AM - 4:00 PM.
 - ❖ Excludes days when school is not in session
 - Public schools calendar can be found at:
<https://www.hawaiipublicschools.org/DOE%20Forms/2018-19calendar.pdf>

ACT 045, HAR 4-66-64.2

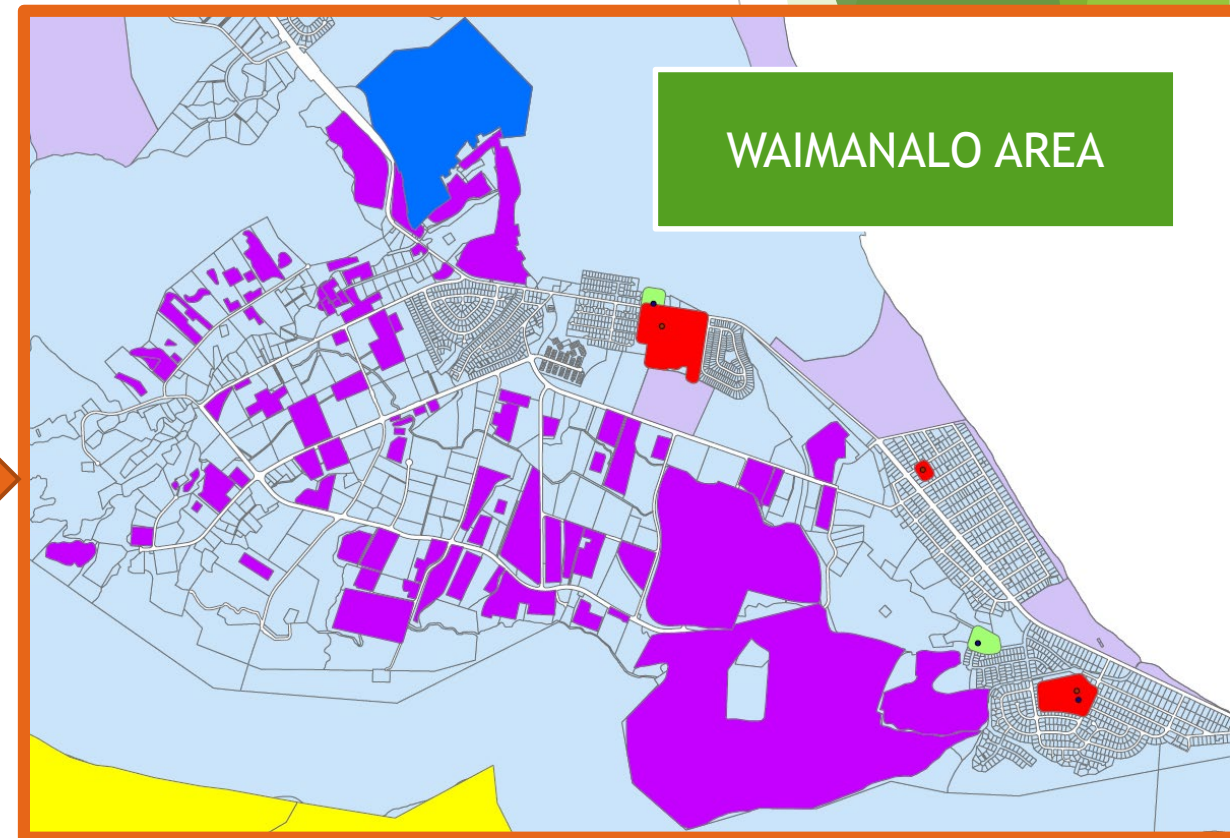
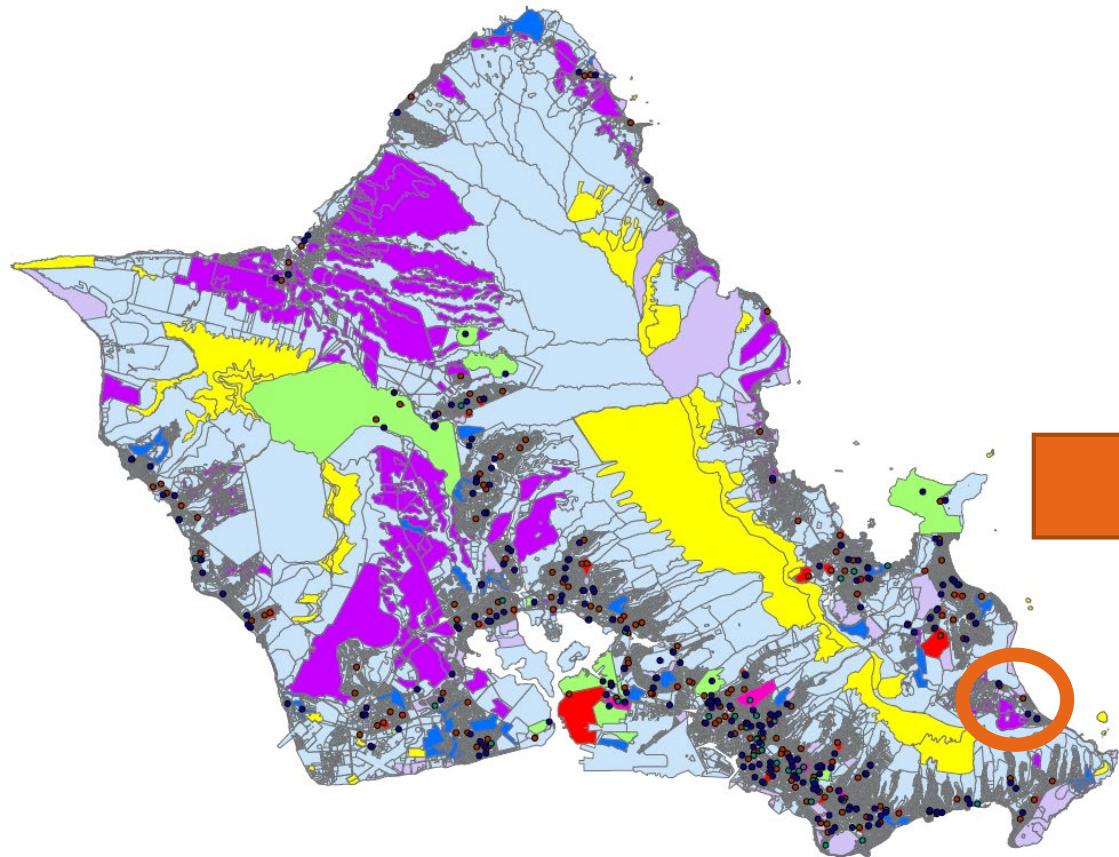
Buffer Zones continued...

- ▶ Buffer zone = an area in which no restricted use pesticides may be applied
- ▶ Buffer zone may be determined by tax map key
- ▶ If tax map key is not appropriate, buffer zones can be determined by fence lines, landscaping, or other reasonable methods
- ▶ The certified applicator will be responsible for all violations of this rule

Buffer Zones continued...

- ▶ HDOA can provide a map upon request
 - ▶ Based on TMKs from Office of Planning

Red = schools
Green = preschools
Light purple = public parks
Dark purple = Ag land (Farms/nurseries)
Blue = Golf courses
Yellow = Conservation land



ACT 045

No Longer Use Pesticides Containing Chlorpyrifos starting January 1, 2023

- ▶ Requested and approved permits will allow the temporary use or application of a pesticide containing chlorpyrifos until December 31, 2022.
- ▶ Violations with pesticides containing chlorpyrifos will be subject to a penalty as outlined in 149A-41.
- ▶ Product registration licenses will NOT be renewed
- ▶ Chlorpyrifos will be an RUP on the date which the DOA approves addition of Chlorpyrifos to the state RUP list
- ▶ Do NOT BUY unless you have an HDOA permit and an HDOA RUP License

State Registered Pesticides Containing Chlorpyrifos

- ▶ NuFarm Chlorpyrifos SPC 4 Insecticide [228-624](#)
- ▶ Stallion Brand Insecticide [279-9545](#)
- ▶ Duraguard ME MicroEncapsulated Insecticide [499-367](#)
- ▶ Duraplex TR Total Release Insecticide [499-405](#)
- ▶ Durashield CS Controlled Release Insecticide [499-419](#)
- ▶ Andersons Gold Products Insecticide III [9198-167](#)
- ▶ Hot Shot MaxAttrax Roach Bait [9688-67-8845](#)
- ▶ Rainbow Fire Ant & Insect Killer [13283-14](#)
- ▶ Warhawk [34704-857](#)
- ▶ Warhawk Clearform [34707-1077](#)
- ▶ Y-Tex Warrior Insecticide Cattle Ear Tag [39039-6](#)
- ▶ Lorsban 15G [62719-34](#)
- ▶ Dursban 50W in water soluble packets [62719-72](#)
- ▶ Lorsban 4E [62719-220](#)
- ▶ Lorsban 50W Insecticide in water soluble packets [62719-221](#)
- ▶ Lorsban 75 WG [62719-301](#) & [62719-301-10163](#)
- ▶ Lorsban Advanced [62719-591](#)
- ▶ Cobalt Advanced [62719-615](#)
- ▶ Quali-Pro Chlorpyrifos 4E Insecticide [66222-19](#)
- ▶ Chlorpyrifos 4E AG [66222-19](#)
- ▶ Vulcan [66222-233](#)

HAR 4-66-61

Directly Supervising Non-certified applicators using RUPs

- ▶ Certified applicators shall give non-certified applicators use-specific written instructions, which shall include:
 - ▶ Label directions
 - ▶ Precautions
 - ▶ Site requirements
 - ▶ Method of application
 - ▶ Pesticide used
- ▶ Certified applicator shall ensure equipment for mixing, loading, transferring, and applying can be done reasonably without risk to non-cert applicator
- ▶ Certified applicator shall ensure access to product labeling at all times, and provide appropriate PPE and ensure its proper use
- ▶ Certified applicator shall ensure means for immediate communication with the non-certified applicator
- ▶ Non-certified applicators must meet requirements set by **Title 40 CFR 171** (EPA)

HAR 4-66-61, Title 40 CFR 171 (b)

Non-certified applicators : Age

- ▶ Non-certified must be at least 18 years of age to apply restricted use pesticides
- ▶ EXCEPTION: Can be at least 16 years if ALL requirements below are met:
 - ❖ Certified applicator who is supervising must be a PRIVATE applicator and an IMMEDIATE family member
 - ❖ RUP is NOT a fumigant, sodium cyanide, or sodium fluoroacetate
 - ❖ CANNOT apply aerially

HAR 4-66-61, Title 40 CFR 171 (c)

Non-certified applicators cont.

- ▶ Non-certified applicators must meet requirements set by Title 40 CFR 171 (EPA)
- ▶ Non-certified applicator must meet at least ONE of the following qualifications
 - ▶ (1) The noncertified applicator has been trained in accordance with paragraph (d) of this section within the last 12 months.
 - ▶ (2) The noncertified applicator has met the training requirements for an agricultural handler under 40 CFR 170.501 of this title within the last 12 months.
 - ▶ (3) The noncertified applicator has met the requirements established by a certifying authority that meet or exceed the standards in §171.201(c)(1).
 - ▶ (4) The noncertified applicator is currently a certified applicator but is not certified to perform the type of application being conducted or is not certified in the jurisdiction where the use will take place.

HAR 4-66-61, Title 40 CFR 171 (d)

Non-certified applicator Training Program

- ▶ (2) The person who conducts the training must meet one of the following criteria:
 - ▶ (i) Be currently certified as an applicator of restricted use pesticides under this part.
 - ▶ (ii) Be currently designated as a trainer of certified applicators or pesticide handlers by EPA, the certifying authority, or a State, Tribal, or Federal agency having jurisdiction.
 - ▶ (iii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of handlers under 40 CFR part 170.
- ▶ (3) Non-certified applicator training materials must include, at a minimum, the following:
 - ▶ (i) Potential hazards from toxicity and exposure that pesticides present to noncertified applicators and their families, including acute and chronic effects, delayed effects, and sensitization.
 - ▶ (ii) Routes through which pesticides can enter the body.
 - ▶ (iii) Signs and symptoms of common types of pesticide poisoning.
 - ▶ (iv) Emergency first aid for pesticide injuries or poisonings.

HAR 4-66-61, Title 40 CFR 171 (d)

Non-certified applicators cont.

► Training contents continued...

- (v) Routine and emergency decontamination procedures, including emergency eye flushing techniques. Noncertified applicators must be instructed that if pesticides are spilled or sprayed on the body, to immediately wash or to rinse off in the nearest clean water. Noncertified applicators must also be instructed to wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible.
- (vi) How and when to obtain emergency medical care.
- (vii) After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.
- (viii) Wash or shower with soap and water, shampoo hair and change into clean clothes as soon as possible after working with pesticides.
- (ix) Potential hazards from pesticide residues on clothing.
- (x) Wash work clothes before wearing them again and wash them separately from other clothes.
- (xi) Do not take pesticides or pesticide containers used at work to your home.
- (xii) Potential hazards to children and pregnant women from pesticide exposure.
- (xiii) After working with pesticides, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.
- (xiv) How to report suspected pesticide use violations to the appropriate State or Tribal agency responsible for pesticide enforcement.

HAR 4-66-61, Title 40 CFR 171 (d)

Non-certified applicators cont.

► Training contents continued...

- (xv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, including the location and meaning of the restricted use product statement, how to identify when the labeling requires the certified applicator to be physically present during the use of the pesticide, and information on personal protective equipment.
- (xvi) Need for, and appropriate use and removal of, personal protective equipment.
- (xvii) How to recognize, prevent, and provide first aid treatment for heat-related illness.
- (xviii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
- (xix) Environmental concerns such as drift, runoff, and wildlife hazards.
- (xx) Restricted use pesticides may be used only by a certified applicator or by a noncertified applicator working under the direct supervision of a certified applicator.
- (xxi) The certified applicator's responsibility to provide to each noncertified applicator instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population, and risks) and the conditions of application (e.g., equipment, method of application, formulation, and risks) might increase or decrease the risk of adverse effects. The certified applicator must provide these instructions in a manner the noncertified applicator can understand.

HAR 4-66-61, Title 40 CFR 171 (d)

Non-certified applicators cont.

► Training contents continued...

- (xxii) The certified applicator's responsibility to ensure that each noncertified applicator has access to the applicable product labeling at all times during its use.
- (xxiii) The certified applicator's responsibility to ensure that where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each noncertified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and use correctly for its intended purpose.
- (xxiv) The certified applicator's responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.
- (xxv) The certified applicator's responsibility to ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her direct supervision.

HAR 4-66-62(g), Title 40 CFR 171 (e,1)

Record Keeping Requirements of Non-certified applicators

- ▶ Certified pesticide applicators shall create or verify the existence of records documenting that each non-certified applicator who mixes, loads, transfers, or applies restricted use pesticides has the qualifications required under section 4-66-61(4)
- ▶ Record keeping requirements via Title 40 CFR 171.201(e) :
 - ▶ (i) If the noncertified applicator was trained in accordance with paragraph (c)(1) of this section, the record must contain all of the following information:
 - ▶ (A) The noncertified applicator's printed name and signature.
 - ▶ (B) The date the training requirement in paragraph (c) of this section was met.
 - ▶ (C) The name of the person who provided the training.
 - ▶ (D) The title or a description of the training provided.

HAR 4-66-62(g), Title 40 CFR 171 (e)

Record Keeping Requirements of Non-certified applicators

- ▶ Record keeping requirements via **Title 40 CFR 171.201(e)** continued...:
 - ▶ **(ii)** If the noncertified applicator was trained as an agricultural handler under 40 CFR 170.501 in accordance with paragraph (c)(2) of this section, the record must contain all of the information required at 40 CFR 170.501(d)(1).
 - ▶ **(iii)** If the noncertified applicator qualified by satisfying the requirements established by the certifying authority, as described in paragraph (c)(3) of this section, the record must contain the information required by the certifying authority.
 - ▶ **(iv)** If the noncertified applicator is a certified applicator who is not certified to perform the type of application being conducted or not certified in the jurisdiction where the use will take place, as described in paragraph (c)(4) of this section, the record must include all of the following information:
 - ▶ **(A)** The noncertified applicator's name.
 - ▶ **(B)** The noncertified applicator's certification number.
 - ▶ **(C)** The expiration date of the noncertified applicator's certification.
 - ▶ **(D)** The certifying authority that issued the certification.

SAMPLE Record Keeping Requirements of Private Non-certified applicators

WORKER PROTECTION STANDARD (WPS) TRAINING SIGN-IN / SIGN-OUT ATTENDANCE SHEET

Date: _____ Time: _____ Location Name / Mailing Address: _____

Title / Subject: _____ Type of Training: ☐ Worker ☐ Handler Language: _____

Training Method(s): ☐ Audiovisual (Provide EPA approval No.): _____ ☐ Oral from Written Material

Other Training Aids (include translators if used): _____

Instructor: _____ Cert. No.: _____ Exp. Date: _____

Qualified to Instruct by: _____
(if not a certified applicator)

Farm or Company Name (if applicable): _____

Print Name	Time In	Signature	Time Out	Signature

**MUST BE TRAINED
AS A HANDLER**

HAR 4-66-62(g), Title 40 CFR 171 (e,2)

Record Keeping Requirements of Non-certified applicators for Commercial Applicators

- ▶ Record keeping requirements via **Title 40 CFR 171.201(e)** continued...:
- ▶ **(2)** The commercial applicator must create or verify the existence of the record containing the information in paragraph (e)(1) of this section before allowing the noncertified applicator to use restricted use pesticides under his or her direct supervision.
- ▶ **(3)** The commercial applicator supervising any noncertified applicator must have access to records documenting the information required in paragraph (e)(1) of this section at the commercial applicator's principal place of business for two years from the date the noncertified applicator used the restricted use pesticide.

SAMPLE Record Keeping of Non-certified applicators for Commercial Applicators

NON-CERTIFIED APPLICATOR TRAINING SIGN-IN / SIGN-OUT ATTENDANCE SHEET

Date: _____ Time: _____ Location Name / Mailing Address: _____

Title / Subject: _____ Language: _____

Other Training Information: _____

Other Training Aids (include translators if used): _____

Instructor: _____ Cert. No.: _____ Exp. Date: _____

Qualified to Instruct by: _____
(if not a certified applicator)

Company Name (if applicable): _____

Print Name	Time In	Signature	Time Out	Signature

HAR 4-66-54

Retail Signs: Additions

- ▶ EVERY retailer that sells or distributes pesticide products to the public shall post within 10 ft of pesticide display or sales area a warning sign that includes:
 1. Information regarding proper handling, storage, and disposal
 2. Emergency telephone numbers in case of pesticide poisoning
 3. A statement that use of any pesticide product in a manner inconsistent with its label is prohibited by law

HAR 4-66-54

Retail Signs: Additions cont.

► Signage requirements:

1. Shall be at least 17 x 22 in
2. Lettering must be at least 16 point bold
3. Sign must be easily read from 6ft and under all lighting conditions encountered during business hours

**PESTICIDE PRODUCTS FOR
GARDEN AND LAWN OR
OUTDOOR USE ONLY**

**IT IS UNLAWFUL, AND MAY BE
HAZARDOUS TO USE INSIDE YOUR
HOME**

HAWAII ADMINISTRATIVE RULES CHAPTER 4-66-54



Department
of Agriculture
STATE OF HAWAII

HAR 4-66-60

CEU Class Approval

- ▶ Class sponsor/provider shall submit a written application for each training no LESS than 30 days before the scheduled class date
- ▶ Fees may be incurred for expedited approval
 - ▶ \$0-100
- ▶ Approval for the class is valid for 2 years
- ▶ Online/webinar classes are approved on a case-by-case basis

HAR 4-66-66

Fee Increases

- ▶ Pesticide product licensing and renewals: \$330 -> **\$930**
- ▶ Dealer permits
 - ▶ Principal sales outlets: \$250 -> **\$500**
 - ▶ Branch sales outlets: \$100 -> **\$200**
- ▶ Exam fee per category: \$25 -> **\$50**
- ▶ Card fees (dealer reps and applicators):
 - ▶ New or Renewal card: \$50 -> **\$100**
 - ▶ Duplicate: \$25 -> **\$50**
 - ▶ Change company: \$25 -> **\$50**
 - ▶ Add category to existing card: \$25 -> **\$50**

Other Changes: HAR 4-66-60(e)

- ▶ Changes to certification must be reported to the Department within 30 calendar days
 - ▶ Change include name, applicator category, address, or employer
- ▶ Failure to notify the Department within 30 days of change may result in:
 - ▶ Certification revocation
 - ▶ Additional penalties provided by law

REMEMBER!

- ▶ These are all currently PROPOSED RULE changes to HAR 4-66
- ▶ ACT 045 is already LAW
- ▶ The rules will not go into effect until the Governor approves and signs
- ▶ The Department will send out a notice to all certified applicators and dealers of the changes after they are approved
- ▶ Leave us your email address to make sure you are on the list
- ▶ This presentation will be available on HDOA website

For Questions or Additional Assistance Contact:

► Big Island

❖ Cal Westergard @ 974-4143 cal.j.westergard@hawaii.gov

► Maui

❖ Mitchell MacCluer @ 873-3078 mitchell.s.maccluer@hawaii.gov

► Oahu

❖ Greg Takeshima @ 973-9411 greg.y.takeshima@hawaii.gov

❖ Esther Medrano @ 973-9424 Esther.Medrano@hawaii.gov

❖ Adam Yamamoto @ 973-9409 adam.y.yamamoto@hawaii.gov

► Kauai

❖ Emilee Wedekind-Balualua @ 241-7140 emilee.j.wedekind-balualua@hawaii.gov

References

- ▶ “Amendment and Compilation of Chapter 4-66 Hawaii Administrative Rules.”

<https://hdoa.hawaii.gov/wp-content/uploads/2018/10/HAR-Title-4-Chap-66-RAMSEYER-revised-10-26-2018-003.pdf>

- ▶ Act 045.

<https://hdoa.hawaii.gov/wp-content/uploads/2018/09/Act-045-Legislative-Session-2018.pdf>

- ▶ 40 CFR 171.201

<https://www.gpo.gov/fdsys/granule/CFR-2017-title40-vol26/CFR-2017-title40-vol26-sec171-201>

- ▶ Hawaii Department of Agriculture Website

Licensed Pesticides: <http://hdoa.hawaii.gov/pi/pest/licensed-pesticides/>

Proposed Rule Changes: <http://hdoa.hawaii.gov/meetings-reports/proposedar/>