

AGENDA
BOARD OF AGRICULTURE MEETING

Date: March 14, 2017
Time: 10:00 a.m.
Location: Mayor Hannibal Tavares Community Center
91 Pukalani Street
Makawao, Maui, Hawaii 96796

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES FROM 12/13/16 MEETING
- III. COMMENTS FROM THE GENERAL PUBLIC ON AGENDA ITEMS (ORAL OR WRITTEN)
- IV. INTRODUCTIONS
- V. COMMUNICATIONS FROM DIVISIONS AND ADMINISTRATION
 - A. AGRICULTURAL LOAN DIVISION
 1. Request for Approval of One (1) Direct Operating Loan to 'Ano'ano Farms, LLC and Max Bowman, co-borrowers.
 2. Request for Approval of One (1) Direct Operating Loan to Justin A. P. Manuel.
 3. Request for Approval of One (1) Direct Farm Ownership loan to Kula Country Farms, LLC, Chauncy H. Monden and Teena M. Monden, co-borrowers.
 - B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION
 1. Request to Approve Rental Offset, General Lease No. S-3108; Waikele Farms, Inc.; TMK: (1) 9-4-012:002, Lot 35, Upper Pouhala, Waikele, Ewa, Island of Oahu, Hawaii
 2. Request for Consent to Assignment of General Lease No. S-3768; Stanley S. Kawabata, Assignor to Kevin and Susan Mulkern, Assignee; TMK: 1st Div/4-1-027:027. Lot 28; Waimanalo Farm Lots, Koolaupoko, Waimanalo, Island of Oahu, Hawaii
 3. Request for Approval of Corporate Stock Transfer for Hawaiian Sunshine Nursery, Inc.; General Lease No. S-3121, TMK: (1st Div/4-1-024:062 and 063, Lot 31; Koolaupoko, Waimanalo, Island of Oahu; and General Lease No. S-4773; TMK: 3rd Div/2-2-056:052, Lot No. 26, Panaewa Agricultural Park, Waiakea, South Hilo, Island of Hawaii
 4. Request for Consent to Assignment of General Lease No. S-4750, Richard M.C. Kim, Inc. Assignor, James R. Kim, Assignee; TMK: 3rd Div/2-2-056:029, Lot No. 03, Panaewa Agricultural Park, Waiakea, South Hilo, Island of Hawaii.
 5. Request for Approval of Extension of General Lease No. S-4790, Fred Soriano; TMK: 3rd Div/8-80004:010, Lot No. 10, Papa Homesteads, Papa 1st, South Kona, Island of Hawaii
 6. Request for Approval to Sublease between the Hamakua Agricultural Cooperative and Jianguo Wang; General Lease No. 5553, TMK: 3rd Div/4-3-003:004 (por); Lot 04, and General Lease

No. S-7013; TMK: 3rd Div/4-3-005:020 (por); Lot No. 02, Pihihala & Hauola, and Kaumanu Homesteads, Hamakua, Island of Hawaii

7. Request for Approval to: 1) Mutually Cancel Existing General Lease No. S-3003, Kona Producers Cooperative; and 2) Issue a new General Lease to The Food Basket, Inc.; Kona Produce Marshalling Facility: TMK: 3rd Div/7-9-016:018, Honalo, North Kona, Island of Hawaii
8. RESUBMITTAL: Request Approval for the Transfer of Public Lands by Tax Map Keys from the Department of Land and Natural Resources to the Department of Agriculture Pursuant to Act 90, SLH 2003, Codified as Chapter 166E, HRS

C. PLANT INDUSTRY DIVISION
Pesticides Branch

1. Request for: (1) Preliminary Approval of Proposed Amendments to Chapter 4-66, *Hawaii Administrative Rules*, entitled "Pesticides" and (2) Authorization for the Chairperson to Schedule Public Hearing(s) and Appoint a Hearings Officer in Connection with the Proposed Amendments to Chapter 4-66, *Hawaii Administrative Rules*. Reference: A request for approval of proposed partial amendments to Chapter 4-66, *Hawaii Administrative Rules* and to schedule public hearing(s) received board approval on November 24, 2015. (See attached summary of proposed rule amendments.)

D. QUALITY ASSURANCE DIVISION

1. Request for (1) acceptance of the minutes of the public hearings, and (2) adoption of amendments to sections 4-143-6, 4-143-11, and 4-143-12, *Hawaii Administrative Rules*, to extend the sunset date for the defect tolerance for coffee from June 30, 2017 to June 30, 2020.

E. PLANT INDUSTRY DIVISION
Plant Quarantine Branch

1. Request to Designate the Island of Maui as an Expanded Coffee Berry Borer Infested Area Subject to Quarantine Measures to Prevent the Movement of the Coffee Berry Borer, Coffee Plants and Parts Thereof Including Unroasted Seeds (Green Coffee Beans), Used Coffee Bags, and Coffee Harvesting Equipment Including Baskets, Sacks or Containers, Except by Permit Requiring Mitigative Measures.
2. Request to: (1) Allow the Importation of Unlisted Microorganism, Zika Virus, Determined to be High Risk, by Special Permit, for Laboratory Research by Hawaii Biotech, Inc.; and (2) Establish Permit Conditions for the Importation of Unlisted Zika Virus, by Special Permit, for Laboratory Research by Hawaii Biotech, Inc.

VI. OLD BUSINESS

None.

VII. NEW BUSINESS

1. Discussion on amendment to Hawaii Administrative Rules, Chapter

69A, to allow government officials and their representatives from entering their property to control or eradicate pests.

2. Request for an update on the transfer of land on Maui from the Department of Land and Natural Resources to the Department of Agriculture.
3. Request from the organic farming community on Hawaii Island to declare a state of emergency for Little Fire Ant infestations on organic farms there, so the organic producers can treat specific areas without losing their organic certification for the entire farm.

VIII. ADJOURNMENT OF REGULAR MEETING

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*The Board may go into Executive Session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS.*

*Those persons desiring to submit written testimony may do so via postal mail to the BOA Chairperson's Office at 1428 S. King Street, Honolulu, HI 96814-2512; via fax to the BOA Chairperson at (808) 973-9613 or via e-mail to [HDOA.BOARD.TESTIMONY@HAWAII.GOV](mailto:HDOA.BOARD.TESTIMONY@HAWAII.GOV). Please include the word "testimony" and the subject matter following the address line. Those persons desiring to present oral testimony at the BOA meeting are requested to register with staff prior to the convening of the meeting. If possible, submit 14 copies of the written testimony to staff prior to the meeting.*

*A copy of the proposed rules will be available for review in person during regular business hours in the BOA Chairperson's Office, 1428 S. King Street, Honolulu, Hawaii, on and after Thursday, 3/9/17, and on the department's website.*

**NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE BOA CHAIRPERSON'S OFFICE, 1428 S. KING STREET, HONOLULU, HAWAII, ON AND AFTER THURSDAY, 3/9/17.**

Summary of Proposed Amendments to Chapter 4-66, *Hawaii Administrative Rules*  
Board of Agriculture  
March 14, 2017

1. Establish or update definitions for the following in Section 4-66-2, HAR:
  - a. "Drift" and "pesticide spray drift";
  - b. "Enclosed space production" or "greenhouse production";
  - c. "Licensee";
  - d. "Permittee";
  - e. "Personal protective equipment";
  - f. "Reasonable";
  - g. "Runoff";
  - h. "Surface water"; and
  - i. "Use" or "to use a pesticide"
2. Revise language regarding pesticide product label requirements for clarity and to comply with changing Federal standards. Section 4-66-5 through 4-66-31, HAR.
3. Add surface water as another basis for restricted use classification when a pesticide or pesticide use can reasonably be anticipated to result in contamination of surface water. Section 4-66-32(b)(3), HAR.
4. Update the management scheme for classification of pesticides or pesticide uses as state restricted, Section 4-66-32 and 32.1, to:
  - a. Require consultation with the Hawaii Department of Health for those pesticides or pesticide uses that may be a health hazard;
  - b. Add section referring to the department's review policy for pesticides and pesticide uses that meet or exceed criteria set forth in 4-66-32(b) and 4-66-32.1;
  - c. Remove the state restricted pesticide list from the HAR for management as an external list;
  - d. Require board approval of any change to the externally managed state restricted pesticides list, and
  - e. Clarify the process for evaluation of pesticides and pesticide uses.
5. Clarify that approval is required from the head for pesticides not requiring licensing, which includes pesticides distributed for limited field, laboratory or greenhouse trials of less than  $\frac{1}{4}$  acre. Section 4-66-33(b)(6), HAR.
6. Increase time allowed for licensee to make necessary corrections to pesticide labels from fifteen to thirty calendar days should any claims on the label be unwarranted or not in compliance with federal or state law. Section 4-66-36(b), HAR.
7. Clarify ability to enter any place or conveyance where pesticides are suspected of being applied on non-target sites or locations, and establishes procedures for sample collection. Section 4-66-43(a) through (c), HAR.
8. Require written notification to the head for intrastate shipment or use of a substance or mixture of substances being put through laboratory, enclosed space production, or limited field trials for uses that fall under the experimental use permit exception. Section 4-66-47, HAR.
9. Require applications for renewal of experimental use permits to be submitted no less than thirty days prior to the permit expiration date. Section 4-66-49(c), HAR.
10. Allow the department to apply penalties if permittee or person supervising experiment does not comply with the permit requirements. Section 4-66-51(c), HAR.
11. Clarify language for requirements and permit conditions for restricted use pesticide dealers and dealer representatives. Section 4-66-52, HAR.

12. Allow the department to apply penalties if restricted use pesticide dealer fails to submit copies of restricted use pesticide sales reports in accordance with applicable rules. Section 4-66-53(d), HAR.
13. Add new subsection to implement section 149A-15.5, Hawaii Revised Statutes (Act 174, 2007) requirement for retailer posting of pesticide warning information for consumers. Section 4-66-54(d), HAR.
14. Add soil and non-soil fumigant pest control to category 1 (Agricultural) for persons using or supervising the use of restricted use pesticides for fumigation to align with federal requirements. Section 4-66-56, HAR.
15. Require certified applicators to possess a history of honesty, truthfulness, financial integrity and fair dealing in order to receive and maintain a certification to apply restricted use pesticides. Section 4-66-57, HAR.
16. Add specific criteria for examination, certification, and renewal standards, including methodology on proctoring exams, and criteria for examination questions; Clarify the certification and recertification process and criteria. Sections 4-66-57 and 4-66-60, HAR.
17. Clarify and add specifics to exam criteria for commercial and private applicators. Section 4-66-58, HAR.
18. Grant the department the authority to deny issuance or renewal of certification, or suspend or revoke certification of applicators who fail to cooperate with an inspection conducted by the department. Section 4-66-58, HAR.
19. Change the procedure for certification on non-English speaking applicators to “certification of private applicator under special circumstances” to align with Federal Certification and Training requirements. Section 4-66-60, HAR.
20. Require commercial and private applicators who had their certification suspended or revoked to participate in remedial education programs prior to certification reinstatement. Section 4-66-60, HAR.
21. Specify and clarify requirements for use of restricted use pesticides by non-certified applicators, including obligations and duties of the supervising certified applicator. Section 4-66-61, HAR.
22. Add language to align recordkeeping requirements for restricted use pesticides to align with federal law. Section 4-66-62, HAR.
23. Allow the department to revoke annual use permits and apply penalties if applicator does not comply with the permit requirements. Section 4-66-63.1, HAR.
24. Clarify conditions of aerial permits and allow the department to revoke permits and apply penalties if applicator does not comply with the permit requirements. Section 4-66-64, HAR.
25. Add section on conditions and limitations on pesticide applications by non-aerial applicators, including requirements on following label requirements, equipment maintenance, and drift prevention. Section 4-66-64.1, HAR.
26. Increase the following fees in Section 4-66-66, HAR:
  - a. Pesticide product licensing and renewal fee from \$330 to \$930 per three-year period;
  - b. Establish a one-time fee of \$330 for non-chemical pest control devices;

- c. Increase restricted use pesticide dealer permit from \$250 per year for principal sales outlets and \$100 per year for branches to \$500 per year for principal sales outlets and \$200 per year for branches;
- d. Examination fees for applicators and pesticide dealer representatives from \$25 to \$50;
- e. Restricted use pesticide dealer permit and applicator certification card fees from \$50 to \$100;
- f. Replacement applicator certificate or pesticide dealer representative permit from \$25 to \$50;
- g. Hourly rate for educational services, testing, training, or independent contractor hired by the department from \$25 per hour to \$50 per hour;
- h. The head may waive or reduce fees based upon demonstrated financial hardship.

27. Clarify the ability of the department to establish penalties with the penalty assessment schedule as a guideline Section 4-66-66.1, HAR.

28. Create addendum to section 4-66-66.1 to establish penalties for violations of Chapter 149A, HRS or 4-66, HAR.

29. Revisions have been made throughout to update language for compliance with federal law.