

AGENDA
BOARD OF AGRICULTURE MEETING

Date: April 25, 2017
Time: 9:00 a.m.
Location: Plant Quarantine Conference Room
1849 Auiki Street
Honolulu, Hawaii 96819

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES FROM 3/14/17 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 Farm Ownership Loan to Viktoria Antova and David Suppi.
 - 2. Request for Approval of One (1) Farm Capital Improvement Loan and One (1) Farm Operating Loan to Maui Dragon Fruit Farm, LLC.
 - 3. Request that Two (2) Loans to Ky Chareune be Referred to the Attorney General for Disposition and/or Collection.
 - 4. Request that Two (2) Loans to Khammouane Chandara be Referred to the Attorney General for Disposition and/or Collection.
 - B. AGRICULTURAL RESOURCE MANAGEMENT DIVISION
 - 1. Request for Consent to Assignment of General Lease No. S-6014; Dana Daody Kiat-A-Nan and Wilton S. Clifford, Assignor, to Dana Daody Kiat-A-Nan, Assignee; TMK (1) 1st Div/5-6-006:042, Lot No. 14, Kahuku Agricultural Park, Koolauloa, Kahuku, Island of Oahu
 - 2. Request for Approval to Install Photovoltaic (PV) System; General Lease No. S-3107; Michael G. Buck; TMK (1) 4-1-027:002; Lot No. 44, Koolaupoko, Waimanalo, Island of Oahu, Hawaii
 - 3. Request for 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, Hawaii Revised Statutes
 - C. PLANT INDUSTRY DIVISION
 - Pesticides Branch
 - 1. Request for: (1) Preliminary Approval of Proposed Amendments to Chapter 4-66, *Hawai'i 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, *Hawai'i Administrative Rules*. Reference: A request for approval of proposed partial amendments to Chapter 4-66, *Hawai'i Administrative Rules* and to schedule public hearing(s) received board approval on November

24, 2015. (See attached summary of proposed rule amendments.)

VI. OLD BUSINESS

None.

VII. NEW BUSINESS

None.

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, 4/20/17, 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, 4/20/17.**

## Proposed amendments to Chapter 4-66 *Hawaii Administrative Rules (HAR)*

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. Update the following rules to align with State and Federal requirements:
  - a. Revise language regarding pesticide product label requirements. Section 4-66-5 through 4-66-31, HAR.
  - b. Add new subsection to implement section 149A-15.5, *Hawaii Revised Statutes* (HRS) (Act 174, 2007) requirement for retailer posting of pesticide warning information for consumers to align with State and Federal requirements. Section 4-66-54(d), HAR.
  - c. 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.
  - d. 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 to align with Federal Rule changes. Sections 4-66-57 and 4-66-60, HAR.
  - e. Clarify and add specifics to exam criteria for commercial and private applicators to align with Federal Rule changes. Section 4-66-58, HAR.
  - f. 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.
  - g. Add language to align recordkeeping requirements for restricted use pesticides with federal law. Section 4-66-62, HAR.
  - h. Other minor revisions have been made throughout to update language for compliance with federal law.
  
3. Clarify the language in the following items:
  - a. Clarify that the head must be notified prior to distribution of pesticides that do not require licensing, such as pesticides distributed for limited field, laboratory or greenhouse trials of less than ¼ acre. Section 4-66-33(b)(6), HAR.
  - b. 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.
  - c. Clarify language for requirements and permit conditions for restricted use pesticide dealers and dealer representatives. Section 4-66-52, HAR

- d. 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.
- e. 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.

4. Make the following rule changes:

**Registration and Licensing**

- a. 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, groundwater, significant reductions in non-target organisms, or fatality to members of endangered species. As with ground water, surface water will be subject to a scientific review process before classification as non-restricted or restricted use. Section 4-66-32(b)(3), HAR.
- b. Update the management scheme for classification of pesticides or pesticide uses as state restricted, Section 4-66-32 and 32.1, to:
  - i. Require consultation with the Hawaii Department of Health for those pesticides or pesticide uses that may be a health hazard;
  - ii. 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;
  - iii. Remove the state restricted pesticide list from the HAR for management as an external list;
  - iv. Require board approval of any change to the externally managed state restricted pesticides list, and
  - v. Clarify the process for evaluation of pesticides and pesticide uses. In doing this, the licensing process for new products will be streamlined, allowing actives to be licensed without requiring a rule change to classify them as State restricted.
- c. 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.
- d. 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.
- e. 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.

**Education, certification, and training**

- f. 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.
- g. 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.
- h. 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.

- i. 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.

**Enforcement**

- j. Clarify the ability of the department to establish penalties with the penalty assessment schedule as a guideline. Section 4-66-66.1, HAR.
  - k. Create addendum to section 4-66-66.1 to establish penalties for violations of Chapter 149A, HRS or Chapter 4-66, HAR.
5. 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.