

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 6

DIVISION OF PLANT INDUSTRY

CHAPTER 66

PESTICIDES

§4-66-1	Objectives
§4-66-2	Definitions
§4-66-3	Administrative, enforcement, and penalty
§4-66-4	Contents of the pesticide label; generally
§4-66-5	Label; name, brand, or trademark
§4-66-6	Label; name and address of producer, registrant, or person for whom produced
§4-66-7	Label; net weight or measure of contents
§4-66-8	Label; product registration number
§4-66-9	Label; producing establishment registration number
§4-66-10	Label; ingredient statement; generally
§4-66-11	Label; position of ingredient statement
§4-66-12	Label; names to be used in Ingredient statement
§4-66-13	Label; statements of percentages
§4-66-14	Label; accuracy of stated percentages
§4-66-15	Label; deterioration
§4-66-16	Label; inert ingredients
§4-66-17	Label; warnings and precautionary statements; generally

§4-66-18	Label; required front panel statements
§4-66-19	Label; other required warnings and precautionary statements
§4-66-20	Label; directions for use; generally
§4-66-21	Label; placement of directions for use
§4-66-22	Label; exceptions to requirement for directions for use
§4-66-23	Label; contents of directions for use
§4-66-24	Label; statement of use classification; generally
§4-66-25	Repealed
§4-66-26	Label; restricted use classification
§4-66-27	Label; prominence and legibility
§4-66-28	Label; language to be used
§4-66-29	Label; placement
§4-66-30	Label; false or misleading statements
§4-66-31	Label; final printed form
§4-66-32	Restricted use pesticides
§4-66-32.1	Evaluation of pesticide uses
§4-66-33	Pesticide licensing; exceptions
§4-66-34	Applications for licensing pesticides and approval of non-chemical pest control devices
§4-66-35	Pesticide licensing; effective date
§4-66-36	Pesticide [ <b>licensing</b> ] <b>licenses</b> ; corrections
§4-66-37	Special local need (SLN) registration
§4-66-38	Special local need; unreasonable adverse effects
§4-66-39	Special local need; label, packaging and coloration requirements
§4-66-40	Special local need; classification
§4-66-41	Special local need; notification and submission of data to Environmental Protection Agency ( <b>EPA</b> )

§4-66-42	Repealed
§4-66-42.1	Coloration of [ <del>Pesticides</del> ] pesticides
§4-66-43	Enforcement
§4-66-44	Notice of [ <del>judgment</del> ] enforcement action
§4-66-45	Experimental use permits; generally
§4-66-46	Experimental use permits; prohibitions
§4-66-47	Experimental use permits; exceptions
§4-66-48	Experimental use permits; provision for issuance
§4-66-49	Experimental use permits; restrictions
§4-66-50	Experimental use permits; reports
§4-66-51	Experimental use permits; monitoring and revocation
§4-66-52	Restricted use pesticide dealer and dealer representative
§4-66-53	[ <del>Dealer's</del> ] Dealers' records and reports
§4-66-54	Storage, display, and sale of pesticides
§4-66-55	Disposal of pesticides and empty pesticide containers
§4-66-56	Certification of applicators
§4-66-57	General standards for certification of applicators
§4-66-58	Specific standards for certification of applicators
§4-66-59	Repealed
§4-66-60	Certification procedures; certificate renewal
§4-66-61	Conditions on the use of restricted use pesticides by non-certified applicator
§4-66-62	Certified pesticide applicator recordkeeping
§4-66-63	Repealed
§4-66-63.1	Annual Use Permit
§4-66-64	Conditions and limitations on restricted use pesticide application [ <del>and sale</del> ] by aircraft

§4-66-64.1	<u>Conditions and limitations on pesticide application by means other than aircraft</u>
§4-66-65	Repealed
§4-66-66	Fees
§4-66-66.1	[ <del>Proposed enforcement penalty guidelines</del> <u>Enforcement action and penalty assessment schedule</u> ]
§4-66-67	Severability

NONSUBSTANTIVE CHANGES

TO CORRECT AND UPDATE CHAPTER ANALYSES SECTION.

BRACKETS AND STRIKE THROUGH = ~~DELETE~~  
 UNDERLINED = ADD

**Historical Note:** This chapter is based substantially upon Regulation 1 entitled "Pesticide Regulation" of the division of plant industry, department of agriculture. [Eff[.] 2/22/74; am 12/10/77; R 7/13/81][+]

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-1 Objectives.** The objectives of these rules are to implement the requirements of chapter 149A, Hawaii Revised Statutes (HRS), which provides for the registration, licensing, certification, recordkeeping, usage, and other activities related to the safe and efficacious use of pesticides. [Eff[.] 7/13/81; comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

*NONSUBSTANTIVE CHANGES*

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-2 Definitions.** As used in this chapter:

"Act" means the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes[[:]].

"Adjuvant" means any substance added to a spray tank to improve and enhance the performance of the pesticide being applied.

"Agricultural commodity" means any plant, or plant product, or animal or animal product, produced by, but not limited to, farmers, ranchers, vineyardists, plant propagators, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons for sale.

~~["Attractant" means all substances or mixtures of substances which, through their property of attracting certain pests, are to be combined with a toxicant to mitigate a population of, or destroy, vertebrate or invertebrate animals considered to be pests.]~~

"Board" means board of agriculture.

"Certification" means the authorization granted by the state or federal government to a person to use, handle, or supervise the use of restricted use pesticides.

"Certification standard" means a requirement for certification.

"Changed use pattern" means a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

"Chemigation" means applying pesticides through irrigation systems.

"Commercial applicator" or "commercial pesticide applicator" means a certified applicator, whether or not a private applicator with respect to some uses, who uses or supervises the use of any pesticide [which] that is classified for restricted use for any purpose or on any property other than as provided by the definition of "Private pesticide applicator" in §149A-2, Hawaii Revised Statutes.

"Competent" means the state of being able and

qualified to perform a particular function in pesticide application, the degree of competence being directly related to the nature of the activity and the associated responsibility.

"Department" means the State of Hawaii, Department of Agriculture.

"Domestic application" means application of a pesticide directly to humans or pets, or application of a pesticide in, on, or around all structures, vehicles, or areas associated with the household or home life, patient care areas of health related institutions, or areas where children spend time, including but not limited to:

- (1) Gardens, non-commercial greenhouses, yards, patios, houses, pleasure marine craft, mobile homes, campers and recreational vehicles, non-commercial campsites, home swimming pools and kennels;
- (2) Articles, objects, devices or surfaces handled or contacted by humans or pets in all structures, vehicles or areas listed above;
- (3) Patient care areas of nursing homes, mental institutions, hospitals, and convalescent homes; and
- (4) Educational, lounging and recreational areas of preschools, nurseries and day camps.

"Drift" or "pesticide spray drift" means the movement of pesticide dust or droplets through the air at the time of application or soon after, to any site other than the area intended.

"Enclosed space production" or "greenhouse production" means production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering and that is large enough to permit a person to enter.

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. sections 136 et. seq., as amended.

"Finished bait" means an end use bait product [which] that requires no preparation or mixing.

"Front panel" means that portion of the label of



a pesticide product that is ordinarily visible to the purchaser under the usual conditions of display for sale.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus, bacterium, or virus. Fungicides include:

- (1) Products intended for use as seed or plant treatments to destroy or prevent fungus diseases;
- (2) Products intended for use in disinfecting, sanitizing, or sterilizing premises or other inanimate objects to prevent or destroy organisms [which] that cause diseases of man or other animals;
- (3) Products for use in reducing bacterial counts in water or air; and
- (4) Products intended for use as wood preservatives which prevent rot or decay in wood by preventing or destroying organisms which cause decay or rot;

Products not considered fungicides include:

- (1) Products intended for use in preventing or destroying any fungus or virus on or in living man or other animals and those on or in processed food, beverages or pharmaceuticals (the term process foods includes processed animal feed and the term pharmaceuticals is intended to include cosmetics); and
- (2) Paints [which] that are treated to protect the paint itself and bear no claim for preventing or destroying fungi after application to any surface.

"Hazard" means a situation where there exists a possibility that a given pesticide will cause injury or have unreasonable adverse effects on the environment.

"Head" means the head of the division of plant industry, Hawaii department of agriculture, or any officer or employee to whom authority has been duly delegated.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed including any algae

or other aquatic weed, or any plant parts growing where not wanted.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insect. The term shall not include pharmaceutical products approved by the United States Food and Drug Administration for use, under prescription by a licensed physician on humans or by a licensed veterinarian on animals.

"LC<sub>50</sub>" means a concentration of substance, expressed as parts per million parts of medium, [that] which is lethal to fifty per cent of the test population of animals under test conditions acceptable for registration under FIFRA.

"LD<sub>50</sub>" means a single dermal or oral dose of a substance, expressed as milligrams per kilogram (mg/kg) of body weight, [that] which is lethal to fifty per cent of the test population of animals under test conditions acceptable for registration under FIFRA.

"License" for the purposes of sections 4-66-52, 4-66-53 and 4-66-66, Hawaii Administrative Rules [~~HAR~~], means and is interchangeable with a permit under sections 149A-17 and 149A-18, Hawaii Revised Statutes.

"Licensed sales outlet" or "Dealer" means a specified site authorized by permit to sell or distribute restricted use pesticides pursuant to section 149A-17, Hawaii Revised Statutes, where restricted use pesticides are kept for sale or distribution and where records of such sale, distribution, or disposition of restricted use pesticides are kept and that has been licensed pursuant to section 4-66-52.

"Licensed pesticide dealer representative" or "pesticide dealer representative" means a person authorized to sell restricted use pesticides in a licensed sales outlet and who has successfully passed an examination required by the head and obtained a [license] permit pursuant to section 4-66-52.

"Licensee" means a person who has been licensed to register a product pursuant to the provisions of section 149A-13, Hawaii Revised Statutes.

"Mode of action" means the manner that a pesticide

impacts key biochemical processes responsible for its effect.

["Nematocide"] "Nematicide" or "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes inhabiting soil, water, plants, or plant parts.

"Non-target organisms" means those flora and fauna (including humans) that are not intended to be controlled, injured, killed, or detrimentally affected in any way by a pesticide.

"Permittee" means any applicant to whom a permit has been granted.

"Personal protective equipment" (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical resistant aprons, chemical-resistant headgear, and protective eyewear, as further defined in section 170.240 of title 40, Code of Federal Regulations (2016).

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as [~~an~~ attractant,] a plant regulator, defoliant, or desiccant. A product shall be deemed to be a pesticide regardless of whether it is intended for use as packaged, or as a dilution or mixture with substances such as carriers or baits. Products not considered pesticides include:

- (1) Deodorants, bleaching agents, and cleaning agents for which no pesticidal claims are made or implied;
- (2) Embalming fluids;
- (3) Building materials [~~which~~ that] have been treated to protect the material itself against any pest and bear no claims for protection of other surfaces or objects;
- (4) Fabrics [~~which~~ that] have been treated to protect the fabric itself from insects, fungi, or any other pests;
- (5) Fertilizer and other plant nutrients; and
- (6) Products intended only for use after further

processing or manufacturing such as grinding to dust or other operations.

"Private pesticide applicator" or [~~private applicator~~] "private applicator" means a certified pesticide applicator who uses or supervises the use of any pesticide [~~which~~] ~~that~~ is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the property of another person.

"Reasonable" means that which is appropriate, fair and sensible for a particular situation as understood by a person of average caution under the same or similar circumstances.

"Reentry" means the action of entering an area or site where a pesticide has been applied.

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating animals belonging to the Order Rodentia of the Class Mammalia such as rats, mice, gophers, rabbits, hares, and closely related species.

"Runoff" means rainfall or snowmelt events that flow over land or impervious surfaces, such as paved streets, parking lots, building roof tops, and does not soak into the ground.

"Surface water" means water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, lakes, rivers, ponds, streams, other watercourses, reservoirs, and coastal waters subject to the jurisdiction of the State of Hawaii. Water from natural springs is surface water when it exits from the spring onto the earth's surface.

"Under the direct supervision of a certified applicator" [~~means,~~] means that, unless otherwise prescribed by a pesticide's labeling, [~~that~~] a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though the certified

applicator is not physically present at the time and place the pesticide is applied.

"Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

~~["Use" means any act of handling, other than transportation in previously unopened, sealed containers, or any release of a pesticide, or exposure of humans or the environment to a pesticide through acts, including but not limited to:~~

- ~~(1) Application of a pesticide, including mixing and loading of any required supervisory action in or near the area of application;~~
- ~~(2) Storage actions for pesticides and pesticide containers; and~~
- ~~(3) Disposal actions for pesticides and pesticide containers.]~~

"Use" or "to use a pesticide" means any of the following:

- (1) Pre-application activities, including, but not limited to: Arranging for the application of the pesticide, mixing and loading the pesticide, making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.
- (2) Application of the pesticide.
- (3) Post-application activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early-entry workers, providing decontamination supplies, providing pesticide safety

information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

- (4) Other pesticide-related activities, including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide containing materials.

"Use pattern" means the manner in which a pesticide is applied and includes the following parameters of pesticide application:

- (1) Target pest;
- (2) Crop or animals treated;
- (3) Application site; and
- (4) Application technique, rate and frequency.

[Eff[.] 7/13/81; am and comp 12/16/06; am and comp  
] (Auth: HRS §149A-33) (Imp: HRS  
§149A-33)

SUBSTANTIVE CHANGES

TO DELETE CONFUSING AND UNNECESSARY DEFINITIONS.  
TO REPLACE DEFINITIONS AND ADD DEFINITIONS THAT COMPLY  
WITH FIFRA.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO CORRECT GRAMMAR.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).

**§4-66-3 Administration, enforcement, and penalty.**

The head may take any action as may be necessary in the administration and enforcement of the Act, this rule, and the penalty provisions as provided by law. [Eff[~~-~~] 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

- §4-66-4 Contents of the pesticide label; generally.** Every pesticide product shall bear a label containing the information specified by the Act and these rules. The contents of a label shall show clearly and prominently the following:
- (1) The name, brand, or trademark under which the product is sold or prescribed in section 4-66-5;
  - (2) The name and address of the producer, registrant, or person for whom produced as prescribed in section 4-66-6;
  - (3) The net contents as prescribed in section 4-66-7;
  - (4) The EPA product registration number as prescribed in section 4-66-8;
  - (5) The EPA producing establishment number as prescribed in section 4-66-9;
  - (6) An ingredient statement as prescribed in [section] sections 4-66-10 to [section] 4-66-16;
  - (7) [Warning] Hazard, warning or precautionary statements as prescribed in [section] sections 4-66-17 to [section] 4-66-19;
  - (8) The directions for use as prescribed in [section] sections 4-66-20 to [section] 4-66-23; and
  - (9) The use classification as prescribed in section 4-66-24. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp ]  
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

**NONSUBSTANTIVE CHANGES**

**FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO CONFORM TO FIFRA.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).**



**§4-66-5 Label; name, brand, or trademark.**

(a) The name, brand or trademark under which the pesticide product is sold shall appear on the front panel of the label.

(b) No name, brand, or trademark may appear on the label ~~which~~ that is:

- (1) ~~[Is false]~~ False or misleading; or
- (2) Has not been approved by the head through registration or licensing. [Eff[~~-~~] 7/13/81; comp 12/16/06; am and comp \_\_\_\_\_]  
(Auth: HRS §§149A-14, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO CORRECT GRAMMAR.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-6 Label; name and address of producer, registrant, or person for whom produced.** An unqualified name and address given on the label shall be considered as the name and address of the producer. If the registrant's name appears on the label and the registrant is not the producer, or if the name of the person for whom the pesticide was produced appears on the label, it shall be qualified by appropriate wording such as "[packed] Packed for .....", "[distributed] Distributed by .....", or "[sold] Sold by ....." to show that the name is not that of the producer. [Eff[.] 7/13/81; comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO CONFORM TO FIFRA.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-7 Label; net weight or measure of contents.**

(a) The net weight or measure of content shall be exclusive of wrappers or other materials and shall be the average content unless explicitly stated as a minimum quantity.

(b) If the pesticide is a liquid, the net content shall be in terms of liquid measure at 68° F. (20° C.) and shall be expressed in conventional American units [~~or~~] of fluid ounces, pints, quarts, and gallons.

(c) If the pesticide is solid or semi-solid, viscous or pressurized, or is a mixture of liquid and solid, the net content statement shall be in terms of weight expressed as avoirdupois pounds and ounces.

(d) In all cases, net content shall be stated in terms of the largest suitable units, i.e., "1 pound 10 ounces" rather than "26 ounces."

(e) In addition to the required units specified in this section, net content may be expressed in metric units.

(f) Variation above minimum content or around an average is permissible only to the extent that it represents deviation unavoidable in good manufacturing practice. Variation below a stated minimum is not permitted. In no case shall the average content of the packages in a shipment fall below the stated average content. [Eff[ ] 7/13/81; am and comp 12/16/2006; am and comp \_\_\_\_\_] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

**NONSUBSTANTIVE CHANGES**

**TO CONFORM TO FIFRA.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).**

**§4-66-8 Label; product registration number.** The registration number assigned to the pesticide product at the time of registration by the Environmental Protection Agency shall appear on the label, preceded by the phrase "EPA Registration No.," or the phrase "EPA Reg. No." The registration number shall be set in type of a size and style similar to other print on that part of the label on which it appears and shall run parallel to it. [Eff[.]7/13/81; comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-9 Label; producing establishment registration number.** The producing establishment registration number preceded by the phrase "EPA Est.", of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. It shall appear on the wrapper or outside container of the package if the EPA establishment registration number on the immediate container cannot be clearly read through the wrapper or container. [Eff[.] 7/13/81; comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-10 Label; ingredient statement; generally.**

(a) The label of each pesticide product shall bear a statement [which] that contains the name and percentage by weight of each active ingredient, the total percentage by weight of all inert ingredients; and if the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic calculated as elemental arsenic.

(b) The active ingredients shall be designated by the term "active ingredients" and the inert ingredients by the term "inert ingredients[,]" or "other ingredients", or the singular forms of these terms when appropriate. Both terms shall be in the same type size, be aligned to the same margin and be equally prominent. The statement "Inert Ingredients, none" is not required for pesticides [which] that contain one hundred per cent active ingredients.

(c) Unless the ingredient statement is a complete analysis of the pesticide, the term "analysis" shall not be used as a heading for the ingredient statement.  
[Eff[.] 7/13/81; comp 12/16/06; am and comp  
] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO CORRECT GRAMMAR.  
TO CONFORM TO FIFRA.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-11 Label; position of ingredient statement.**

(a) The ingredient statement is normally required on the front panel of the label. If there is an outside container or wrapper through which the ingredient statement cannot be clearly read, the ingredient statement shall also appear on the outside container or wrapper. If the size or form of the package makes it impracticable to place the ingredient statement on the front panel of the label, permission may be granted for the ingredient statement to appear elsewhere.



(b) The text of the ingredient statement shall run parallel with the other text on the panel on which it appears, and shall be clearly distinguishable from, and shall not be placed in, the body of other text. [Eff[.] 7/13/81; comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*





**§4-66-13 Label; statements of percentages.** The percentages of ingredients shall be stated in terms of weight-to-weight. The sum of percentages of the active and inert ingredients shall be one hundred. Percentages shall not be expressed by a range of values such as "22-25%." If the uses of the pesticide product are expressed as weight of active ingredient per unit area, a statement of the weight of active ingredient per unit volume of the pesticide formulation shall also appear in the ingredient statement. [Eff[] 7/13/81; comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-14 Label; accuracy of stated percentages.**

The percentages given shall be as precise as possible reflecting good manufacturing practice. If there may be unavoidable variation between manufacturing batches, the value stated for each active ingredient shall be the lowest percentage [which] that may be present. [Eff[ ]]  
7/13/81; comp 12/16/06; am and comp \_\_\_\_\_]  
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)(Imp:  
HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO CORRECT GRAMMAR.*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-15 Label; deterioration.** Pesticides [which] that significantly change in chemical composition [significantly] shall meet the following labeling requirements:

(1) In cases where it is determined that a pesticide formulation changes chemical composition significantly, the product shall bear the following statement in a prominent position on the label: [~~"not for sale or use after (date)";~~] "Not for sale or use after (date)"; and

(2) The product shall meet all label claims up to the expiration [time] date indicated on the label. [Eff[~~-~~] 7/13/81; comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO CORRECT GRAMMAR.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO CONFORM TO FIFRA.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-16 Label; inert ingredients.** The head may require the name of any inert ingredient or ingredients to be listed in the ingredient statement if it is determined that such ingredient or ingredients may pose a hazard to humans or the environment. [Eff[.] 7/13/81; comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-17 Label; warning and precautionary statements; generally.** Required warnings and precautionary statements concerning the general areas of toxicological hazard including hazard to children, environmental hazard, and physical or chemical hazard fall into two groups: those required on the front panel of the labeling and those [which] that may appear elsewhere. Specific requirements concerning content, placement, type size, and prominence are given in [section] sections 4-66-18 and [section] 4-66-19. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.60) (Imp: HRS §§149A-15,149A-33, 40 CFR §156.60)

*NONSUBSTANTIVE CHANGES*

*TO CORRECT GRAMMAR.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-18 Label; required front panel statements.**

(a) With the exception of the child hazard warning statement, the text required on the front panel of the label is determined by the toxicity category of the pesticide. The category is assigned on the basis of the highest hazard shown by any of the following hazard indicators:

**Toxicity category I**

Oral LD<sub>50</sub>..... Up to and including  
50 mg/kg  
Inhalation LC<sub>50</sub>..... Up to and including  
0.2 mg/liter  
Dermal LD<sub>50</sub>..... Up to and including  
200 mg/kg  
Eye effects..... Corrosive; corneal opacity  
not reversible within 7 days  
Skin effects..... Corrosive

**Toxicity category II**

Oral LD<sub>50</sub>..... [From] > 50 through 500  
mg/kg  
Inhalation LC<sub>50</sub>..... [From] > 0.2 through 2  
mg/liter  
Dermal LD<sub>50</sub>..... [From] > 200 through 2,000  
mg/kg  
Eye effects..... Corneal opacity reversible  
within 7 days; irritation  
persisting for 7 days  
Skin effects..... Severe irritation at  
72 hours

**Toxicity category III**

Oral LD<sub>50</sub>..... [From] > 500 through 5,000  
mg/kg  
Inhalation LC<sub>50</sub>..... [From] > 2 through 20  
mg/liter  
Dermal LD<sub>50</sub>..... [From] > 2,000 through 20,000  
mg/kg  
Eye effects..... No corneal opacity;  
irritation reversible  
within 7 days  
Skin effects..... Moderate irritation at  
72 hours

**Toxicity category IV**

Oral LD <sub>50</sub> .....	[Greater than]	>	5,000 mg/kg
Inhalation LC <sub>50</sub> .....	[Greater than]	>	20 mg/liter
Dermal LD <sub>50</sub> .....	[Greater than]	>	20,000 mg/kg
Eye effects.....	No irritation		
Skin effects.....	Mild or slight irritation at 72 hours		

(b) Human hazard signal words required for the respective toxicity categories shall be as follows:

- (1) Toxicity category I. All pesticide products meeting the criteria of toxicity category I for any route of exposure shall bear on the front panel, the signal word [ "danger." ] "DANGER." In addition, if the product was assigned to toxicity category I on the basis of its oral, inhalation, or dermal toxicity (as distinct from skin and eye local effects) the word [ "poison" ] "POISON" shall appear in red on a background of distinctly contrasting color, and the skull and crossbones shall appear in immediate proximity to the word [ "poison" ] "POISON";
- (2) Toxicity category II. All pesticide products meeting the criteria of toxicity category II by any route of exposure shall bear on the front panel the signal word [ "warning" ] "WARNING";
- (3) Toxicity category III. All pesticide products meeting the criteria of toxicity category III by any route of exposure shall bear on the front panel the signal word [ "caution" ] "CAUTION";
- (4) Toxicity category IV. All pesticide products meeting the criteria of toxicity category IV [shall bear on the front panel the signal word "caution"] by all routes of exposure are not required to bear a signal word. If a signal word is used, it shall be "CAUTION"; and
- (5) Use of any signal word or words associated with a higher toxicity category is not permitted except when the head determines that

such labeling is necessary to prevent unreasonable adverse effects to humans or the environment. In no case shall more than one human hazard signal word appear on the front panel of a label.

(c) Every pesticide product label shall bear on the front panel the statement [~~"keep out of reach of children."~~] **"KEEP OUT OF REACH OF CHILDREN."** Only in cases where the likelihood of contact with children during distribution, marketing, storage, or use is demonstrated by the applicant to be extremely remote, or if the nature of the pesticide is such that it is approved for use on infants or small children, may the head waive this requirement.

(d) [~~Statement of practical treatment~~] **First Aid statement or Statement of Practical Treatment** required for the respective toxicity categories shall be as follows:

- (1) A [~~statement of practical treatment (first aid or other)~~] **First Aid statement or Statement of Practical Treatment** shall appear on the front panel of the label of all pesticides falling into toxicity category I on the basis of oral, inhalation or dermal toxicity. The head may, ~~however,~~ permit reasonable variations in the placement of the [~~statement of practical treatment~~] **First Aid statement or Statement of Practical Treatment** if some reference such as [~~"see statement of practical treatment on back panel"~~] **"SEE FIRST AID STATEMENT ON BACK PANEL"** or **"SEE STATEMENT OF PRACTICAL TREATMENT ON BACK PANEL"** appears on the front panel near the word [~~"poison"~~] **"POISON"** and the skull and crossbones; and
- (2) For other toxicity categories, the [~~statement of practical treatment~~] **First Aid statement or Statement of Practical Treatment** is not required on the front panel except as described in (1) above. The applicant may, ~~however,~~ include such a front panel statement at [~~his~~] **the applicant's** option. [~~Statements of practical treatment are, however,~~] **First Aid statements or Statements of Practical Treatment are** required elsewhere on the label



in [~~accord~~] accordance with this section [~~4-66-18~~], if [~~they~~] the First Aid statements or Statements of Practical Treatment do not appear on the front panel.

(e) All the required front panel warning statements shall be grouped together on the label, and shall appear with sufficient prominence relative to other front panel text and graphic material to make them unlikely to be overlooked under customary conditions of purchase and use. The minimum type size requirement shall be [~~that established under FIFRA~~] 6-point type unless a larger type size is established under FIFRA. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §§156.60-156.68) (Imp: HRS §§149A-15, 149A-33, 40 CFR §§156.60-156.68)

*NONSUBSTANTIVE CHANGES*

*TO CONFORM TO FIFRA.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-19 Label; other required warnings and precautionary statements.** (a) ~~["The warnings and precautionary statements as required below shall appear together on the label under the general heading "precautionary statements"]~~ Each product is required to bear hazard and precautionary statements for environmental hazards. Hazard statements describe the type of hazard that may be present. Precautionary statements inform the user of actions to take to avoid the hazard or mitigate its effects. The environmental hazard statements must appear together under the heading "PRECAUTIONARY STATEMENTS" and under appropriate subheadings ~~[of "hazard to humans and domestic animals"]~~ such as "Hazard to Humans and Domestic Animals", ~~["environmental hazard"]~~ "Environmental Hazard", ~~[and "physical or chemical hazard"]~~ and "Physical or Chemical Hazard".

(b) Where a hazard exists to humans or domestic animals, precautionary statements are required indicating the particular hazard, the route or routes of exposure, and the precautions to be taken to avoid accident, injury, or damage. The precautionary paragraph shall be immediately preceded by the appropriate hazard signal word.

(c) Where a hazard exists to non-target organisms excluding humans and domestic animals, ~~[precautionary statements are]~~ the subheading "Environmental Hazards" under the heading "PRECAUTIONARY STATEMENTS" is required stating the nature of the hazard and the appropriate precautions to avoid potential accident, injury, or damage. Examples of the hazard statements and the circumstances under which they are required follow:

- (1) If a pesticide intended for outdoor use contains an active ingredient with a mammalian acute oral LD<sub>50</sub> of 100 mg/kg or less, the statement ~~["this pesticide is toxic to wildlife"]~~ "This pesticide is toxic to wildlife" is required;
- (2) If a pesticide intended for outdoor use contains an active ingredient with a fish acute LC<sub>50</sub> of 1 ppm or less, the statement ~~["this pesticide is toxic to fish"]~~ "This

- pesticide is toxic to fish" is required;
- (3) If a pesticide intended for outdoor use contains an active ingredient with an avian acute oral LD<sub>50</sub> of 100 mg/kg or less, or a subacute dietary LC<sub>50</sub> of 500 ppm or less, the statement [~~"this pesticide is toxic to wildlife"~~] "This pesticide is toxic to wildlife" is required;
- (4) If either accident history or field studies demonstrate that use of the pesticide may result in fatality to birds, fish, or mammals, the statement [~~"this pesticide is extremely toxic to wildlife (fish)"~~] "This pesticide is extremely toxic to wildlife (fish)" is required;
- (5) For uses involving foliar application to agricultural crops, forests, shade trees, or mosquito abatement treatments, pesticides toxic to pollinating insects shall bear appropriate label cautions, such as "This pesticide is toxic to bees and other pollinating insects. Do not apply if bees or other pollinating insects are visiting the treatment area"; and
- (6) For all outdoor uses other than aquatic applications, the label shall bear the caution [~~"keep out of lakes, ponds, or streams. Do not contaminate water by cleaning of equipment or disposal of wastes"~~] "Keep out of lakes, ponds, or streams. Do not contaminate water by cleaning of equipment or disposal of wastes".
- (d) Warning statements on the flammability or explosive characteristics of the pesticide are required as shall be established under [~~FIFRA~~] section 156.78 of Title 40, Code of Federal Regulations (2016). [Eff[.] 7/13/81; comp 12/16/06; am and comp ]  
(Auth: HRS §§149A-15, 149A-33, 40 CFR §§156.70, 156.78, 156.80 and 156.85) (Imp: HRS §§149A-15, 149A-33, 40 CFR §§156.70, 156.78, 156.80 and 156.85)

*NONSUBSTANTIVE CHANGES*

*TO CONFORM TO FIFRA.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-20 Label; directions for use; generally.**

Directions for use shall be stated in terms [which] that can be easily read and understood by the average person likely to use, or to supervise the use of, the pesticide. When followed, directions shall be adequate to protect the public from fraud and from personal injury and to prevent unreasonable adverse effects to humans or the environment. [Eff[~~---~~] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO CORRECT GRAMMAR.*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-21 Label; placement of directions for use.**

(a) Directions may appear on any portion of the label provided that they are conspicuous enough to be easily read by the user of the pesticide product.

(b) Directions for use may appear on printed or graphic matter which accompanies the pesticide provided that:

- (1) If required by the head, the printed or graphic matter is securely attached to each package of the pesticide, or placed within the outside wrapper or bag;
- (2) The label bears a reference to the directions for use in accompanying leaflets or circulars, such as [~~"see directions in the enclosed circular"~~] **"See directions in the enclosed circular"**; and
- (3) The head determines that it is not necessary for the directions to appear on the label. [Eff[.] 7/13/81; am and comp 12/16/06; **am and comp** ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

***NONSUBSTANTIVE CHANGES***

***TO CONFORM TO FIFRA.***

***TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).***

**§4-66-22 Label; exception to requirement for directions for use.** (a) Detailed directions for use may be omitted from labeling of pesticides [~~which~~] ~~that~~ are intended for use only by manufacturers of products other than pesticide products in their regular manufacturing processes, provided that:

- (1) The label clearly shows that the product is intended for use only in manufacturing processes and specifies the type or types of products involved;
- (2) Adequate information such as technical data sheets or bulletins, is available to the trade specifying the type of product involved and its proper use in manufacturing processes;
- (3) The product shall not come into the hand of the general public except after incorporation into finished products; and
- (4) The head determines that the directions are not necessary to prevent unreasonable adverse effects on humans or the environment.

(b) Detailed directions for use may be omitted from the labeling of pesticides for which sale is limited to physicians, veterinarians, or [~~druggists~~] ~~pharmacists~~, provided that:

- (1) The label clearly states that the product is for use only by physicians or veterinarians;
- (2) The head determines that the directions are not necessary to prevent unreasonable adverse effects on humans or the environment; and
- (3) The product is also a drug and regulated under the provisions of the Federal Food, Drug, and Cosmetic Act.

(c) Detailed directions for use may be omitted from the labeling of pesticide products [~~which~~] ~~that~~ are intended for use only by formulators in preparing pesticides for sale to the public provided that:

- (1) There is information readily available to the formulators on the composition, toxicity, methods of use, applicable restrictions or limitations, and effectiveness of the product for pesticide purposes;
- (2) The label clearly states that the product is intended for use only in manufacturing, formulating, mixing, or repacking for use as

- a pesticide and specifies the type or types of pesticide products involved;
- (3) The product as finally manufactured, formulated, mixed, or repackaged is registered; and
- (4) The head determines that the directions are not necessary to prevent unreasonable adverse effects on humans or the environment. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO CORRECT GRAMMAR.*

*TO UPDATE VOCABULARY ("DRUGGIST" TO "PHARMACIST").*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*



**§4-66-23 Label; contents of directions for use.**

The directions for use shall include the following, under the headings [~~"directions for use"~~] **"Directions for use"** [7]:

- (1) Immediately below the directions for use, the statement [~~"it is a violation of Federal law to use this product in a manner inconsistent with its labeling"~~] **"It is a violation of Federal law to use this product in a manner inconsistent with its labeling"**;
- (2) The site or sites of application, [~~for example,~~] **such as:** crops, animals, areas, or objects to be treated;
- (3) The target pest or pests associated with each site;
- (4) The dosage rate associated with each site and pest;
- (5) The method of application, including instructions for dilution, if required, and type or types of application apparatus or equipment required;
- (6) The frequency and timing of applications necessary to obtain effective results without causing unreasonable adverse effects on humans or the environment;
- (7) Specific limitations on reentry to areas where the pesticide has been applied, meeting the requirements concerning reentry provided by [~~section 4-66-65~~] **the Worker Protection Standard, part 170 of Title 40, Code of Federal Regulations, as amended**;
- (8) Specific directions concerning the storage and disposal of the pesticide and its container, meeting the requirements of sections 4-66-54 and 4-66-55. These instructions shall be grouped and appear under the heading [~~"storage and disposal."~~] **"Storage and Disposal."** This heading shall be set in type of the same minimum sizes as required for the child hazard warning [~~required~~] under [~~FIFRA~~] **section 156.60(b) of Title 40, Code of Federal Regulations (2016)**;

- (9) [Limitations] Any limitations or restrictions on use required to prevent unreasonable adverse effects on humans or the environment, such as:
- (A) Required intervals between application and harvest of food or feed crops;
  - (B) Rotational crop restrictions;
  - (C) Warnings as required against use on certain crops, animals, objects, or in or adjacent to certain areas;
  - (D) For federal restricted use pesticides, the category of applicators to whom use is restricted unless the head EPA has determined that the product may be used by any certified applicator;
  - (E) For federal restricted use pesticides, a statement that the pesticide may be applied under the direct supervision of a certified applicator who is not physically present at the site of application but nonetheless available to the person applying the pesticide; and
  - (F) For State restricted use pesticides, the head may require additional safety warnings as a condition of licensing.
  - (G) Other pertinent information [which] that the head determines to be necessary for the protection of humans and the environment. [Eff[.]7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_ ]  
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)(Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO CONFORM TO FIFRA.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO REMOVE REFERENCE TO Section 4-66-65, WHICH WAS  
REPEALED IN 2006.  
TO CORRECT GRAMMAR.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016)*

**§4-66-24 Label; statement of use classification; generally.** Any pesticide product for which some uses are classified for [~~general~~] nonrestricted use and others for restricted use shall be separately labeled according to the labeling standards set forth in this section and shall be marketed as separate products with different registration numbers, one bearing directions only for nonrestricted use or uses and the other bearing directions for restricted use or uses, except that if a product has both restricted use or uses and nonrestricted use or uses, both of these uses may appear on a product labeled for restricted use. [Eff[~~-~~] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §[~~t~~] 156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO ELIMINATE WORD ("general") THAT WAS DELETED FROM THE SECTION IN 2006.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

§4-66-25 Repealed. [~~Eff. 7/13/81~~; [R 12/16/06]

NONSUBSTANTIVE CHANGES

TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).

**§4-66-26 Label; restricted use classification.**

Pesticide products bearing directions for use or uses classified restricted shall bear statements of restricted use classification on the front panel as follows:

- (1) At the top of the front panel of the label, set in type of the same minimum sizes as required under section 156.60(b) of title 40, Code of Federal Regulations (2016) for human hazard signal words, and appearing with sufficient prominence relative to other text and graphic material on the front panel to make it unlikely to be overlooked under customary conditions of purchase and use, the statement [~~"restricted use pesticide"~~] "Restricted Use Pesticide" shall appear; and
- (2) Directly below this statement on the front panel, a summary statement of the terms of restriction imposed as a precondition to registration shall appear. If use is restricted to certified applicators, the following statement is required: [~~"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."~~] "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." If, ~~however,~~ the head determines that other State regulatory restrictions [~~are~~] shall be imposed for the protection of the public, the head [~~shall define the appropriate wording for the terms of restriction by rules~~] may require appropriate terms of restriction as a condition of licensing. [Eff[~~-~~] 7/13/81; comp 12/16/06; am and comp ]  
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

NONSUBSTANTIVE CHANGES

TO CONFORM TO FIFRA.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).

**§4-66-27 Label; prominence and legibility.**

(a) All words, statements, graphic representations, designs, or other information required on the labeling by the Act or the rules in this part shall be:

- (1) Clearly legible to a person with normal vision; and
- (2) Placed with such conspicuousness (as compared with other words, statements, designs, or graphic matter on the labeling) and expressed in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(b) All required label texts shall:

- (1) Be set in six-point or larger type;
- (2) Appear on a clear contrasting background; and
- (3) Not be obscured or crowded. [Eff[~~-~~] 7/13/81; comp 12/16/06; am and comp \_\_\_\_\_]

(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)

(Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-28 Label; language to be used.** All required label or labeling text shall appear in the English language. [~~However, the~~ **The** head may require,] or the applicant may propose, additional text in other languages considered necessary to protect the public. When additional text in another language is necessary, all labeling requirements shall be applied equally to both the English and other-language versions of the labeling. [Eff[.] 7/13/81; am and comp 12/16/06; **am and comp** ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO ADD PROPER PUNCTUATION.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*



**§4-66-29 Label[7]; placement.** (a) The label shall appear on or be securely attached to the immediate container of the pesticide product. For purposes of this section, and the misbranding provisions of the Act, "securely attached" means that a label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. If the immediate container is enclosed within a wrapper or outside container through which the label cannot be clearly read, the label shall also be securely attached to such outside wrapper or container, if it is a part of the package as customarily distributed or sold.

(b) While a pesticide product is in transit, the appropriate parts of [~~the United States Code of Federal Regulations, Title~~] **title** 49 - Transportation, **Code of Federal Regulations**, concerning the transportation of hazardous materials, and specifically those parts concerning the labeling, marking, and placarding of hazardous materials and the vehicles carrying them, define the basic federal requirements. In addition, when any registered pesticide product is transported in a tank car, tank truck, or other mobile or portable bulk container, a copy of the accepted label shall be attached to the shipping papers, and left with the consignee at the time of delivery.

(c) When pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label or labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve. [Eff[7] 7/13/81; am and comp 12/16/06; **am and comp** ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

**NONSUBSTANTIVE CHANGES**

**FOR CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).**

**§4-66-30 Label; false or misleading statements.**

Pursuant to section [~~149A-2(22)~~] 149A-2, Hawaii Revised Statutes, a pesticide or a **nonchemical pest control** device is misbranded if its labeling is false or misleading in any particular including both pesticidal or non-pesticidal claims. Examples of statements or representations in the labeling [~~which~~] **that** constitute misbranding include:

- (1) A false or misleading statement concerning the composition of the product;
- (2) A false or misleading statement concerning the effectiveness of the product as a pesticide or **nonchemical pest control** device;
- (3) A false or misleading statement about the value of the product for purposes other than as a pesticide or **nonchemical pest control** device;
- (4) A false or misleading comparison with other pesticides or **nonchemical pest control** devices;
- (5) Any statement directly or indirectly implying that the pesticide or **nonchemical pest control** device is recommended or endorsed by the Hawaii department of agriculture;
- (6) The name of a pesticide [~~which~~] **that** contains two or more principal active ingredients if the name suggests one or more but not all such principal active ingredients even though the [~~name~~] **names** of the other ingredients are stated elsewhere in the labeling;
- (7) A true statement used in such a way as to give a false or misleading impression to the purchaser;
- (8) Label disclaimers [~~which~~] **that** negate or detract from labeling statements required under the Act and these rules;
- (9) Claims as to the safety of the pesticide or its ingredients, including statements such as "safe", "nonpoisonous", "noninjurious", "harmless", or "nontoxic to humans and pets" with or without a qualifying phrase as "when used as directed"; and
- (10) Non-numerical [~~and~~] **or** comparative statements,



**§4-66-31 Label; final printed form.** (a) Except as provided in section 4-66-31(b), final printed labeling shall be submitted and accepted prior to [registration] licensing. [However, final] Final printed labeling need not be submitted until draft label texts have been provisionally accepted by the head.

(b) Clearly legible reproductions or photo reductions shall be accepted for unusual labels such as those silk-screened directly onto glass or metal containers or large bag or drum labels. [Eff[~~-~~] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

*NONSUBSTANTIVE CHANGES*

*TO CORRECT WORDING ("registration" to "licensing").  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-32 Restricted use pesticides.** (a) A pesticide or pesticide use classified for restricted use under FIFRA shall be classified as a **State** restricted use pesticide.

(b) Any pesticides or pesticide uses meeting or exceeding any of the following criteria shall be a candidate for State restricted use classification:

- (1) Pesticides in toxicity categories I and II as defined in section 4-66-18;
- (2) Pesticides or pesticide uses **[which] that** are determined **by the head, in consultation with the director of the department of health,** to be a health hazard for one or more reasons including, but not limited to, toxicity, body storage, oncogenicity, mutagenicity, and teratogenicity or other reproductive effects;
- (3) Pesticides or pesticide uses **[which] that** can reasonably be anticipated to result in contamination of **surface water, groundwater,** or significant reductions in **[nontarget] non-target** organisms, or fatality to members of endangered species; and
- (4) Pesticides or pesticide uses authorized under section 18, **the Emergency Exemption provision,** of FIFRA.

(c) **Any pesticide, pesticide formulation, pesticide product, or pesticide use that meets or exceeds the criteria set forth in sections 4-66-32(b) and 4-66-32.1(b) shall be subjected to an internal review process by the department prior to being presented to the board for adoption as a State restricted use pesticide.**

(d) The head **[, in consultation with the advisory committee,]** shall determine **[those] which** pesticides, pesticide formulations, pesticide products, or pesticide uses **[meeting or exceeding] meet or exceed** the criteria set forth in **[section] sections** 4-66-32(b) and **4-66-32.1(b),** and shall submit those items for review by the department.

**[ (e) The following pesticides, pesticide formulations, or pesticide products for reasons based on the criteria set forth in section 4-66-32(b) are classified as restricted use pesticides:**

<u>Restricted Use Pesticides</u>	<u>Restricted Concentration</u>
Alachlor	All
Atrazine	All
Bromacil	All
Chlorine gas (effective January 1, 2008)	All
Chloropierin	All
Including its use as an irritant or warning agent when used with any pesticide	
Cyanazine	All
Hexazinone	All
Metolachlor and its isomers	All
Paraquat	All above 0.2% cation
Picloram	All
Simazine	All]

(e) Once the review process has been completed the head shall submit a list of those pesticides, pesticide formulations, pesticide products, and pesticide uses for adoption by the board.

~~[(e)]~~(f) The head may classify a pesticide or pesticide use meeting or exceeding the criteria set forth in section 4-66-32(b) for nonrestricted use if during the department's review process it is determined that measures such as packaging, type of formulation, or method of application eliminate or reduce hazards associated with the pesticide or its use.

(g) The board, upon adoption of those pesticides, pesticide formulations, or pesticide products recommended for classification as a State restricted use pesticide, shall maintain a list of all State restricted use pesticides at the department Office of the Chairperson. The list of State restricted use pesticides shall also be posted on the department's website. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-19, 149A-33, 7 USC [~~136-v,~~] §136v (a)-(b), 7 USC [~~136-w-1,~~] §136w-1 (a)-(b)) (Imp: HRS §§149A-19, 149A-33)

SUBSTANTIVE CHANGES

*Adding or deleting pesticide products to the State*

*Restricted Use pesticide list by rule amendment has proven to be a management problem. Due to the complexity of the rule amendment process it can take years to add a pesticide to the list. In some cases, producers of agricultural commodities have been denied the use of safer and less expensive pesticide products due to the lengthy rule amendment process.*

*The department proposes to maintain the list of State Restricted Use Pesticides on-line and at the Office of the Chairperson rather than in the rule. Any additions or deletions from the list will continue to undergo thorough review by the department using review processes that meet or exceed the standards set forth in sections 4-66-32 and 4-66-32.1. The amendment requires consultation with the director of the State department of health, the entity responsible for monitoring health effects in Hawaii. The amendment allows for input by other knowledgeable individuals. Any change to the State restricted use list requires board approval. The public will have the opportunity to provide comments at the board meeting.*

*NONSUBSTANTIVE CHANGES*

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO CORRECT GRAMMAR.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-32.1 Evaluation of pesticides uses.**

(a) The head may, at any time, evaluate a licensed pesticide **or pesticide proposed for licensing,** to carry out the provisions of the Act. The head shall investigate all reported events and information received that [~~indicate that a licensed~~] **indicates any** pesticide may have caused, or is likely to cause, unreasonable adverse effects to humans or the environment. If the head finds from the investigation that unreasonable adverse effects to humans or the environment have occurred or are likely to occur, the licensed pesticide shall be evaluated.

(b) The head shall evaluate [~~a licensed~~] **any** pesticide when unreasonable adverse effects to humans or the environment have been [~~documented and~~] **found and documented to a reasonable degree of scientific certainty as being** associated with the use of that pesticide. Unreasonable adverse effects to humans or the environment shall include, but not be limited to, the following circumstances:

- (1) Public or worker health hazard;
  - (2) Pesticide residues in drinking water are present in levels [~~which~~] **that** are equal to or exceed twenty [~~(20)~~] [~~percent~~] **per cent** of the established [~~Federal~~] **federal** or [~~state~~] **State** health standards or advisories;
  - (3) Pesticide residues in food or feed are present in levels exceeding the established tolerances; [~~Fish or wildlife hazard, including hazards to endangered species;~~]
  - (4) **Fish or wildlife hazard, including hazards to endangered species;**
  - [~~(4)~~] (5) Toxicity to ~~nontarget~~ **non-target** organisms;
  - [~~(5)~~] (6) Hazardous packaging;
  - [~~(6)~~] (7) Misbranded as established in sections 4-66-4 to 4-66-30;
  - [~~(7)~~] (8) Other information suggesting unreasonable adverse effects on humans or the environment associated with the use of a specific pesticide; and
  - [~~(8)~~] (9) Discovery that data upon which a license was issued are false, misleading, or incomplete.
- (c) The evaluation of [~~the licensed~~] **any** pesticide shall consist of identification of unreasonable adverse



effects to humans or the environment, including the social, economic, and environmental costs of the pesticide, identification of the uses of the [licensed] pesticide, identification of the benefits of the pesticide, identification of alternatives to the [licensed] pesticide, identification of regulatory controls considered by the head in mitigating unreasonable adverse effects on humans or the environment, determination by the head as to whether the effects on humans or the environment are unreasonable, and recommendation by the head for regulatory actions. Evaluation may lead to no change, restriction of use, refusal to issue or renew a license, or cancellation or suspension of the license. The evaluation shall be made available to all interested parties to provide them with an opportunity to submit additional information, and comment on the evaluation. [Eff and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-14, 149A-33) (Imp: HRS §149A-33)

SUBSTANTIVE CHANGES

*TO EXPAND THE SCOPE OF REVIEW FROM LICENSED PESTICIDE PRODUCTS TO ANY PESTICIDE PRODUCTS.*

NONSUBSTANTIVE CHANGES

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.*

*TO CORRECT GRAMMAR.*

*TO CORRECT ERROR FROM THE 2006 AMENDMENT (fish or wildlife hazard was intended to be listed as a separate circumstance, but was inadvertently combined with item directly above).*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-33 Pesticide licensing; exceptions.**

(a) Any manufacturer, packer, seller, distributor, or shipper of a pesticide may apply to license the pesticide.

(b) No person may distribute in the State, any pesticide [~~which~~] that is not licensed with the department, except for the following:

- (1) Pesticides transferred between EPA registered establishments operated by the same producer for packaging or for use in producing another pesticide, provided the pesticides are labeled to clearly show [~~their~~] the identity and [~~the~~] purpose for which [~~they~~] the pesticides are being transferred;
- (2) Pesticides distributed under an experimental use permit issued by the head;
- (3) Pesticides transferred for purpose of disposal when marked to show [~~they~~] the pesticides are for disposal only, and accompanied by sufficient information to identify products and to insure that product can be handled with minimum hazard to [~~man~~] humans or the environment;
- (4) Pesticides intended solely for export when prepared or packed according to specifications of foreign purchaser;
- (5) Pesticides being distributed under [~~an~~] a FIFRA, section 18 emergency exemption; and
- (6) [~~Pesticides~~] Upon written notification of the head, pesticides distributed to research laboratories for the purpose of laboratory or [~~greenhouse~~] enclosed space production tests, or limited replicated field trials of less than one-fourth acre, to determine toxicity or other properties, and from which the producer, researcher, or applicator or any other person conducting the [~~test~~] laboratory or enclosed space production tests or field trial, does not expect to receive any benefit in pest control from its use. [Eff[.] 7/13/81; comp 12/16/06] (Auth: 40 CFR §152.30, HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-19, 149A-33)

SUBSTANTIVE CHANGES

THE CURRENT RULE ALLOWS DISTRIBUTION OF UNLICENSED PESTICIDES TO PERSONS CONDUCTING LABORATORY TESTS, ENCLOSED SPACE PRODUCTION TESTS, OR FIELD TRIALS WITHOUT NOTIFYING THE DEPARTMENT, AS LONG AS THE TESTING IS CONDUCTED 1) ON LESS THAN ONE-FOURTH OF AN ACRE; 2) TO DETERMINE TOXICITY OR OTHER PROPERTIES; AND 3) THE PERSON DOES NOT EXPECT TO RECEIVE ANY BENEFIT IN PEST CONTROL FROM ITS USE.

AS AMENDED, RESEARCHERS WILL STILL BE ABLE TO CONDUCT TESTING AS LONG AS THE HEAD IS NOTIFIED IN WRITING THAT UNLICENSED PESTICIDE TESTING IS BEING CONDUCTED.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO CORRECT GRAMMAR.

CHANGE TERM "GREENHOUSE" TO "ENCLOSED SPACE PRODUCTION" TO CONFORM TO CURRENT EPA DEFINITION. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).

**§4-66-34 Applications for licensing pesticides and for approval of ~~non-chemical~~ nonchemical pest control devices.** The procedures for licensing pesticides, or approval of ~~non-chemical~~ nonchemical pest control devices as defined in ~~Chapter~~ chapter 460J, Hawaii Revised Statutes, ~~hereinafter referred to as devices,~~ are as follows:

- (1) Applications shall be filed by the applicant or by an agent whom the applicant has designated as such by a notarized letter~~[+]~~.
- (2) Applications shall be made on forms ~~provided~~ prescribed by the department and shall contain the following information: name and address of the ~~person whose name shall appear on the label, name and address of the applicant~~ applicant and any other person whose name will appear on the labeling or in the directions for use, name of the pesticide or nonchemical pest control device as shown on the label, the EPA registration number (for pesticides), the EPA establishment number, and the signature of the applicant~~[+]~~ or applicant's designated agent.
- (3) Applications shall be submitted ~~at least~~ no less than thirty calendar days prior to the date ~~before the time when it is desired that~~ licensing is desired to take effect~~[+]~~.
- (4) Applications shall be accompanied by ~~a number of copies of each label~~ one copy of the final printed label in text.pdf or similar format, the EPA stamped "ACCEPTED" label, if applicable, and any other printed or graphic matter ~~which~~ that is required to accompany the pesticide or nonchemical pest control device when offered for sale or distribution, including all claims ~~and~~, directions for use, as and any other materials specified by the head~~[+ and]~~.
- (5) If requested by the head, the applicant for a pesticide license shall provide the complete formula of the pesticide, including active and inert ingredients, and a description of tests and ~~the~~ test results thereof on which claims are based, including efficacy, residue,

safety, and other supporting data that shows the pesticide shall perform its intended function without causing unreasonable adverse effects on humans or the environment.

- (6) If requested by the head, the applicant for nonchemical pest control device approval shall provide a description of the principles fundamental to the efficacy of the nonchemical pest control device [and], a description of the tests conducted according to the procedures described below and [the] test results thereof on which claims are based, including efficacy, reliability, safety, and other supporting data that [show] shows the nonchemical pest control device will perform its intended function without causing unreasonable adverse effects on humans or the environment.
- (7) Each test submitted pursuant to this section shall be based on a written protocol that clearly indicates the objectives and all the methods for the conduct of the test. The protocol shall contain, but not be limited to, the following information:
- (A) A descriptive title and statement of the purpose of the study;
  - (B) The name and address of the sponsor and address of the testing facility at which the study was conducted;
  - (C) Justification for the selection of the test organism;
  - (D) Where applicable, the number, body weight range, sex, source of supply, species, strain, substrain and age of the organisms tested;
  - (E) A description of the experimental design, including methods for the control of bias;
  - (F) Where applicable, a description or identification of the diet for the test animals or fertilization and irrigation schedules for plants used in the test;
  - (G) Treatments, such as the test frequency and volume for nonchemical pest control

- devices, and the method and frequency of administration;
- (H) The type and frequency of data collection, and measurements to be made;
  - (I) The records to be maintained;
  - (J) The date of approval by the sponsor and the signature of the test director; and
  - (K) A statement of the proposed statistical analyses to be used.
- (8) The department may test **nonchemical pest control** devices to determine the reliability, efficacy and safety of the **nonchemical pest control** device. The applicant shall provide **any nonchemical pest control** devices to the department [~~upon its request in order to conduct~~] **for testing upon request**.
- (9) The department shall provide the applicant with ~~a written estimate of the costs necessary to conduct testing,~~ a description of the tests to be conducted, and estimated schedule to complete the tests.
- (10) ~~If the applicant agrees to have the device tested by the department or its authorized representative, half of the estimated costs of the tests shall be paid to the department before the tests are started. The balance shall be paid to the department upon completion of the tests.~~
- ~~(11)~~ The applicant may initiate tests required pursuant to (8) above, using qualified testing facilities, with the concurrence of the department. [Eff[.] 7/13/81; am and comp 12/16/06; **am and comp** ]  
 (Auth: HRS §§149A-13, 149A-15, 149A-19, 149A-33, 460J-24.5) (Imp: HRS §§149A-13, 149A-15, 149A-19, 149A-33, 460J-24.5)

*NONSUBSTANTIVE CHANGES*

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
 TO CORRECT GRAMMAR.  
 TO DELETE PROCEDURE THAT IS NO LONGER NECESSARY.  
 TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
 MANUAL (2016).*

**§4-66-35 Pesticide licensing; effective date.**

(a) Licenses shall become effective on the date issued and, unless canceled by the head, shall continue in effect through the date of expiration.

(b) Pesticide products are to be licensed for a period of three years. All licenses shall expire on December 31 of each third year after license issuance.

(c) Provisional licenses may be issued for experimental use permits to cover the duration of the permit.

(d) Any pesticide product licensed under the Act shall not require any further licensing by other persons provided:

- (1) The pesticide product is in the manufacturer's or registrant's original unbroken container;
- (2) The claims made [~~its~~] in the pesticide product's directions for use, [~~its~~] use classification, and other information contained in [~~its labeling~~] the labeling, do not differ from those made in conjunction with the license currently in effect; and
- (3) Any change in the labeling or formula of a licensed pesticide shall be submitted in advance to the head provided:
  - (A) The licensee shall describe the exact change and upon request, shall submit test results to support any change in labeling claims; and
  - (B) After the effective date of any change in labeling or formulas, the pesticide shall be marketed only under the new label or formula [~~, provided, the~~]. The head may permit a reasonable time for disposition of stocks, if in the opinion of the head, such disposition does not result in any unreasonable adverse effects on humans or the environment. [Eff[ ] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-19, 149A-33)

NONSUBSTANTIVE CHANGES

*TO ADD PUNCTUATION.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*



**§4-66-36 Pesticide licenses; corrections.**

(a) The head shall require the licensee to make necessary changes should the labeling claims of the pesticide be unwarranted, or if the pesticide and its labeling or other material required to be submitted do not comply with the Act or this rule, or when necessary to prevent any unreasonable adverse effect on humans or the environment.

(b) The licensee shall make the necessary corrections within thirty calendar days from receipt of any correction notice. If the licensee fails to make the necessary corrections within ~~[fifteen]~~ thirty calendar days upon receipt of the notice, the head may take any of the following actions, alone or in combination with each other:

- (1) Refuse to license the pesticide;
- (2) Cancel the pesticide license; and
- (3) Change the classification of the pesticide.

(c) Should the head determine that an imminent hazard exists, the head may suspend the license of any pesticide or pesticide use or uses ~~[of a pesticide]~~. The licensee shall be notified within twenty four hours of the suspension and given the reasons for the action.

(d) Should the head find that a pesticide or its labeling fails to comply with FIFRA or ~~[its]~~ regulations implementing FIFRA, the head shall notify EPA and may suggest corrections [which] that would bring ~~[it]~~ the labeling into compliance.

(e) ~~[Applicants]~~ Any licensee aggrieved by a determination of the head relative to refusing, canceling, or suspending a pesticide license, may request a hearing as provided in ~~[§149A-14]~~ section 149A-14(d), Hawaii Revised Statutes. [Eff~~[.]~~] 7/13/81 am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-13, 149A-14, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-14, 149A-19, 149A-33)

SUBSTANTIVE CHANGES

*PERIOD OF TIME THAT PESTICIDE LICENSEE HAS TO MAKE LABEL CHANGES WAS EXTENDED FROM FIFTEEN TO THIRTY DAYS. FIFTEEN DAYS HAS PROVEN TO BE AN INSUFFICIENT AMOUNT OF TIME FOR LABEL CHANGES TO BE MADE.*

NONSUBSTANTIVE CHANGES

TO ADD PUNCTUATION.

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.

TO CORRECT GRAMMAR.

TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).

**§4-66-37 Special local need (SLN) registration.**

(a) The head may register pesticide products for special local needs. All applicants for registration of pesticides to meet special local needs shall submit the following information[.]:

- (1) The name and address of the applicant and any other person whose name shall appear on the labeling or in the directions for use;
- (2) The name of the pesticide product, and if application is for an amendment to a federally registered product, the EPA registration number of that product;
- (3) A copy of proposed labeling, including all claims made for the product [as well as]; directions for [its] use to meet the special local need[,]; [consisting of] the complete proposed labeling for a new product, or the proposed supplemental labeling for registration of an additional use of a federally registered product, and the complete formula of the product[.] if the application is for a new product; and any other information specified by the head which is required to be reviewed prior to registration under this section.

(b) The head shall determine whether there is a special local need for registration [in reviewing any application]. Situations [which] the head may consider as not involving a special local need may include, but are not limited to, use to control a pest problem present on a nationwide basis, and use of a pesticide product registered by other states on an interregional or national basis.

(c) The head shall determine [that the product warrants the claims made for it in the registration application.] whether the claims made for the product in the registration application are warranted. [Eff[.] 7/13/81; comp 12/16/06; am and comp \_\_\_\_\_]

(Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v (c), 40 CFR §§162.152, 162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v (c), 40 CFR §§162.152, 162.153)

NONSUBSTANTIVE CHANGES

TO ADD PUNCTUATION.

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.

TO CORRECT GRAMMAR.

TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).

**§4-66-38 Special local need; unreasonable adverse effects.** (a) ~~Prior~~ Under the following circumstances, prior to issuing a special local need registration ~~in the following cases~~, the head shall determine that use of the product for which registration is sought would not cause unreasonable adverse effects on humans or the environment, when used in accordance with labeling directions or widespread and commonly recognized practices:

- (1) For the use of a product ~~which~~ that has a composition not similar to any federally registered product;
- (2) For the use of a product involving a use pattern not similar to any federally registered use of the same product, or of a product with a similar composition; or
- (3) For the use of a product for which other uses of the same product, or of a product with a similar composition, have had federal registration denied, disapproved, suspended, or canceled by the EPA administrator ~~of EPA~~.

(b) The ~~Determination~~ determination required by subsection ~~4-66-38~~(a) shall be based on data and criteria consistent with federal regulations applicable to the type of product or use under consideration. [Eff~~[-]~~ 7/13/81; am and comp 12/16/06; ~~am and comp~~ ] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v (c), 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v (c), 40 CFR §162.153)

*NONSUBSTANTIVE CHANGES*

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO CORRECT GRAMMAR.  
TO ADD PUNCTUATION.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-39 Special local need; label, packaging and coloration requirements.** (a) The head shall review the proposed labeling submitted with the application to determine compliance subject to the following requirements:

- (1) A copy of the final printed labeling shall be reviewed by the head as soon as practicable after a registration is issued in order to verify compliance;
- (2) A new product registered shall be accompanied, at the time of use, by labeling meeting all applicable criteria of sections 4-66-4 to 4-66-31. New product labeling shall also contain a statement identifying "[~~for~~] For distribution and use only within the [~~state~~] State of Hawaii" and the assigned special local need number.
- (3) For a registration of an additional use of a federally registered product, labeling from the federally registered product shall be accompanied at the time of use by supplemental labeling [~~which~~] that contains:
  - (A) A statement identifying "For distribution and use only within the State of Hawaii";
  - (B) Directions for use to meet the special local need which satisfy the criteria of sections 4-66-10 to 4-66-31;
  - (C) The trade name of the product;
  - (D) The name and address of the special local need registrant;
  - (E) The EPA registration number of the federally registered product;
  - (F) The assigned special local need number;
  - (G) A statement requiring a person using the product to comply with all applicable directions, restrictions, and precautions found in the labeling of the federally registered product; and
  - (H) A statement prohibiting the use of the product in a manner inconsistent with federal and accompanying supplemental labeling.



**§4-66-40 Special local need; classification.**

(a) As part of the registration of any part or use, the head shall classify the product or **product** use consistent with section 4-66-32.

(b) A product or **product** use thereof registered by the head shall be classified by the head for restricted use if the product is identical or similar in composition to a federally registered product for which the use has been classified as restricted under federal law or for which a use similar to the registered use has been classified as [~~registered~~] **restricted** use under federal law, and the registered product or **product** use meets the criteria for classification as restricted use pesticides under section 4-66-32. [Eff[~~-~~] 7/13/81; am and comp 12/16/06; **am and comp \_\_\_\_\_; am and comp \_\_\_\_\_**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v (c), 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v (c), 40 CFR §162.153)

**NONSUBSTANTIVE CHANGES**

**FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO CORRECT WORD ("registered" to "restricted").  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).**



**§4-66-41 Special local need; notification and submission of data to the Environmental Protection Agency (EPA).** (a) Within ten working days from the date of issuance of amendments or revocation of a registration, the head shall notify EPA in writing, of the action. Notification of registrations, or amendments thereto, shall include the confidential statements of the formula of any new product, and a copy of the draft labeling reviewed and approved by the head, provided that labeling previously approved by the EPA as part of a federal registration need not be submitted.

(b) Notification of registrations or amendments shall be supplemented by sending to EPA a copy of the final printed labeling approved by the head within forty-five days after the effective date of registration or amendment.

(c) Notification of revocation [~~or~~] of registration shall indicate the effective date of revocation, and shall state the reasons for revocation.

(d) Within fifteen working days from receipt of a request from EPA, the head shall submit any data used to determine that any unreasonable adverse effect on humans or the environment shall not be caused by a registration of a product with a composition not similar to any federally registered product, or an additional use of a federally registered product, or a use of a product with a composition similar to that of a federally registered product, or if registration of other uses of the federally registered product has been denied, suspended, or canceled [registration] because of health, safety, or environmental concerns. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v (c), 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v (c), 40 CFR §162.153)

**NONSUBSTANTIVE CHANGES**

*TO CORRECT WORD ("or" to "of").  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-42 Repealed.** [~~Eff. 7/13/81;~~] [R 12/16/06]

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

- §4-66-42.1 Coloration of pesticides.** (a) The following requirements for the coloration of certain pesticides have been determined necessary for the protection of public health and the environment.
- (b) Seed Treatment products.
    - (1) Pesticide products intended for use in treating seeds must contain an EPA-approved dye to impart an unnatural color to the seed, unless appropriate tolerances or other clearances have been established [~~under the Federal Food, Drug and Cosmetic Act~~] for residues of the pesticide under section 346a (a)-(g) of title 21, United States Code (2016), the Federal Food, Drug and Cosmetic Act.
    - (2) The following products are exempt from the requirement of paragraph (b)(1) of this section:
      - (A) Products intended and labeled for use solely for commercial seed treatment, provided that the label bears a statement requiring the user to add an EPA-approved dye with the pesticide during the seed treatment process.
      - (B) Products intended and labeled for use solely as at-planting or hopper box treatments.
      - (C) Products, which are gaseous in form or are used as fumigants.
    - (3) EPA-approved dyes for seed treatment are those listed in [~~Title 40 of the Code of Federal Regulations,~~] Part [~~180.1001 (c) or (d)~~] 180.910, 180.920, [or] 180.2010 or 180.2020 of title 40, Code of Federal Regulations (2016). [~~Eff and comp 12/16/06; am and comp~~] (Auth: HRS §§149A-16, 149A-33, 40 CFR §§153.140, 153.155) (Imp: HRS §§149A-16, 149A-33, 40 CFR §§153.140, 153.155)

**NONSUBSTANTIVE CHANGES**

**TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).**

**§4-66-43 Enforcement.** (a) ~~[The]~~ As allowed by law, the head may enter any place or conveyance where pesticides or nonchemical pest control devices are manufactured, stored, packed, delivered for transportation, transported, offered for sale or sold, and may inspect and take samples of the pesticides and nonchemical pest control devices. An unbroken package ~~[shall]~~ may be taken as the official sample where the pesticide is packed in small bottles, or small packages. Where the pesticide is packed in large containers, the official samples ~~[shall]~~ may be a portion taken from one original unopened package in a lot. A chain-of-custody for each sample, from collection through analysis and final disposition, shall be maintained on forms prescribed by the head.

(b) As allowed by law, the head may enter any place or conveyance where pesticides are suspected of being applied on non-target sites or locations, or where pesticides are suspected of being applied in a manner inconsistent with the pesticide label, and may inspect and take official samples where pesticide residue is likely to be present. A chain-of-custody for each sample, from collection through analysis and final disposition, shall be maintained on forms prescribed by the head.

(c) Methods of analyzing samples shall be those adopted and published by the Association of Official Analytical Chemists, ~~[Eighteenth (18th) edition]~~ Official Methods of Analysis of AOAC International (20th edition 2016), where applicable, and ~~[the]~~ other methods as may be necessary to determine whether the product complies with the Act or this rule.

~~[(c)]~~ (d) A notice of ~~[apparent]~~ violation shall include:

- (1) If from an examination or analysis, a pesticide or nonchemical pest control device appears to be in violation of the Act or this rule, a notice in writing shall be sent to the person against whom proceedings are contemplated, giving that person the opportunity to offer a written explanation. The notice shall state the manner in which the sample failed to meet the requirements of the Act or this rule; and

- (2) Any person may, in addition to this written reply to the notice, file with the head within twenty days of receipt of the notice a written request for a hearing in connection therewith.

~~[(d)]~~ (e) The head may issue "stop sale" and "removal from sale" orders to vendors regarding any pesticide or nonchemical pest control device ~~[which]~~ that violates or fails to comply with the provisions of the Act or ~~[this]~~ these rules, and may place written or printed "stop sale" and "removal from sale" notices on any pesticide or nonchemical pest control device.

- (1) Upon receipt of the ~~[orders]~~ "stop sale" or "removal from sale" order, the vendors shall correct the violation and effect full compliance therewith. The articles shall not hereafter be sold, offered for sale, transferred or disposed of except upon authorization by the head; and

- (2) No person shall remove, deface or tamper with any "stop sale" and "removal from sale" notice issued by the head.

~~[(e)]~~ (f) The head may seize any pesticide or nonchemical pest control device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of the Act or this rule. No notice or hearing shall be required prior to the seizure of a pesticide or nonchemical pest control device.

[Eff[.] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-11, 149A-20, 149A-21, 149A-33) (Imp: HRS §§149A-11, 149A-20, 149A-21, 149A-33)

#### SUBSTANTIVE CHANGES

CHANGE "SHALL" TO "MAY" TO GIVE INVESTIGATOR DISCRETION ON HOW EVIDENTIARY SAMPLES WILL BE OBTAINED.

CHAIN-OF-CUSTODY MUST BE MAINTAINED ONCE A SAMPLE IS COLLECTED.

CLARIFIES THAT ENTRY TO PROPERTY FOR INVESTIGATIVE PURPOSES MUST BE LAWFUL.

ADOPTS 20TH EDITION OF AOAC OFFICIAL METHODS OF

*ANALYSIS AS PERFERRED METHOD FOR ANALYZING SAMPLES.*

*NONSUBSTANTIVE CHANGES*

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-44 Notice of [~~judgment.~~] enforcement action.**

Publication of judgments of the courts in cases arising under the criminal or seizure provisions of the Act or this rule, and any final order issued by the department for violation of the Act or this rule, may be made in the form of notices, circulars, or bulletins as the head may direct. [Eff[~~-~~] 7/13/81; comp 12/16/06; am and comp ] (Auth: HRS §§149A-21, 149A-33) (Imp: HRS §§149A-21, 149A-33)

*SUBSTANTIVE CHANGES*

*TO ENABLE PUBLICATION OF FINAL ENFORCEMENT ACTIONS ISSUED BY THE DEPARTMENT IN ADDITION TO COURT JUDGMENTS.*

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-45 Experimental use permits; generally.**

Experimental use permits may be issued for the intrastate shipment, delivery or use of a pesticide product [which] that is to be tested further to determine the scope and limitations of its usefulness and the effect of its use on humans and the environment. Permits may be issued for products for use in experimental programs under the supervision of applicators certified in demonstration and research pest control and broad scale testing under normal conditions of use. The head may require the information and data concerning the product and the proposed testing program [which] that is deemed necessary to make determinations on the merits of the proposals. [Eff[-] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §§172.20 [-] to 172.26) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §§172.20 [-] to 172.26)

*NONSUBSTANTIVE CHANGES*

*TO CORRECT GRAMMAR.*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*



**§4-66-46 Experimental use permits; prohibitions.**

No permits shall be issued for any of the following:

- (1) A product containing an active or inert ingredient [which] that is currently subject to an EPA cancellation or suspension of registration order, or [which] that is currently subject to an EPA notice of intent to suspend or cancel registration because of human health, environmental, or efficacy consideration; except that a permit may be issued for such a product for a purpose or in a formulation [which] that:
  - (A) Is not specifically considered in, or [which] that is not subject to, suspension or cancellation proceedings, after consultation with appropriate EPA officials; or
  - (B) Was specifically considered during the proceedings but not suspended, canceled, or subject to a notice of intent to suspend or cancel.
- (2) A use of a product [which] that has been the subject of a notice of denial of registration under FIFRA; and
- (3) A use of a product, which may involve use in or on food or feed other than as authorized in section 4-66-47. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_ ]  
(Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.24) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.24)

**NONSUBSTANTIVE CHANGES**

**TO CORRECT GRAMMAR.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).**

**§4-66-47 Experimental use permits; exceptions.**

[No] Upon written notification of the head, no experimental use permit is required for the intrastate shipment or use of a substance or mixture of substances being put through laboratory, [greenhouse] enclosed space production, or limited field trials of less than one-fourth acre, in which the [purpose is to determine its value] following three criteria have been met: 1) the purpose of the laboratory, enclosed space production, or limited field trials is to determine the value of a substance or mixture of substances as a pesticide or to determine its toxicity, or other properties[7]; 2) [where] the tests [are being] will be conducted by recognized research personnel; and 3)[from which the user does] the research personnel conducting the tests do not expect to receive any benefit in pest control from [its use] the use of the substance or mixture of substances.

[These] If these three criteria are met, the substances or mixture of substances are not considered to be pesticides within the meaning of the Act or this rule. No State experimental use permit is required if an experimental use permit has been issued by the EPA for the proposed trial(s). [Eff[-] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC [§136(v)] §136v (a)) (Imp: HRS §§149A-19, 149A-22, 149A-33)

SUBSTANTIVE CHANGES

THE CURRENT RULE ALLOWS RESEARCHERS TO FOREGO APPLYING FOR AN EXPERIMENTAL USE PERMIT, OR NOTIFYING THE DEPARTMENT OF ANY EXPERIMENTAL PESTICIDE USAGE, AS LONG AS THE EXPERIMENTAL USE IS CONDUCTED ON LESS THAN ONE-FOURTH OF AN ACRE. AS AMENDED, RESEARCHERS WILL STILL BE ABLE TO CONDUCT EXPERIMENTS ON LESS THAN ONE-FOURTH OF AN ACRE WITHOUT AN EXPERIMENTAL USE PERMIT AS LONG AS THE HEAD IS NOTIFIED IN WRITING THAT EXPERIMENTAL PESTICIDE TESTING IS BEING CONDUCTED.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.

*CHANGE TERM "GREENHOUSE" TO "ENCLOSED SPACE  
PRODUCTION" TO CONFORM TO CURRENT EPA DEFINITION.  
TO CORRECT GRAMMAR.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-48 Experimental use permits; provisions for issuance.** (a) A permit is required for a pesticide intended for experimental use [which] that is not exempt under section 4-66-47. If a pesticide is to be tested for a use, which is likely to result in a residue on or in food or feed, a permit for experimental use may be issued provided:

- (1) A tolerance or exemption from the requirements of a tolerance has been established under section 408 of the Federal Food, Drug, and Cosmetic Act, section 346a of title 21, United States Code (2016); or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, section 348 of title 21, United States Code (2016); or
- (2) The food or feed product derived from the experimental use permit shall be destroyed or used as feed only for laboratory or experimental animals for testing purposes; or
- (3) Convincing evidence is submitted by the applicant that the proposed use shall not result in residues in or on food or feed that would be in excess of that authorized under section 408 of the Federal Food, Drug, and Cosmetic Act, section 346a of title 21, United States Code, or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, section 348 of title 21, United States Code, which would be hazardous to [man] humans, other animals, or the environment.

(b) A permit shall be issued only if it is clearly shown in the permit application that the applicant's instructions for use reasonably assure the protection of humans and the environment.

(c) All applications for an experimental use permit shall be filed by a qualified person on a form [approved] prescribed by the head. Each application shall contain the following:

- (1) Name and address of the shipper, [and] the consignee, and place or places from which the shipment shall be made;
- (2) Proposed date of shipment, or proposed shipping period that shall not [to] exceed one

- year **from the permit application date,** and quantity to be shipped;
- (3) A statement of the composition of material to be covered by the permit, which **[should]** **shall** apply to a single material or similar formulations of the material;
  - (4) The name, address and telephone number and qualification of the person responsible for conducting the test;
  - (5) Available data or reference to available data on the analytical method and toxicity of the pesticide;
  - (6) The purpose or objective of the proposed tests; a description of the proposed testing program including test parameters; a designation of the pest organism or organisms involved; the amount of pesticide product proposed for use; the crops, fauna, flora, sites, modes, dosage rate, and situation of applications on or in which the pesticide is to be used; the number of acres, number **of** structure sites, or number of animals to be treated or included in the area of experimental use; the proposed dates, or period, or periods during which the testing program is to be conducted and the manner in which supervision of the program shall be accomplished; and the method of destruction or disposal of treated food or feed;
  - (7) A statement that the pesticide is intended for experimental use only;
  - (8) Proposed labeling **[which]** **that** shall bear:
    - (A) The prominent statement **["for-  
experimental use only"]** **"For Distribution and Experimental Use Only Within Hawaii"** in the container label and any accompanying circular or other labeling;
    - (B) A warning or caution statement **[which]** **that** may be necessary and if complied with is adequate for the protection of those who may handle or be exposed to the experimental formulations;
    - (C) The name and address of the applicant for the permit;

- (D) The name or designation of the formulation; and
  - (E) If the pesticide is to be sold to experimental use program participants, a statement of the names and percentages of the principal active ingredients in the product; provided[7] that, if the shipper [~~shall submit~~] submits a copy of a valid experimental use permit issued under the provisions of FIFRA, and the accepted labeling related thereto, at the head's discretion, the head may exempt the shipper from the requirement of submitting a part of the application, the data, and information [herein] specified in this subsection; and
- (9) A statement as to the disposal of any unused portions of the experimental pesticide. [Eff[7] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.24) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.24)

SUBSTANTIVE CHANGES

CLARIFIES THAT A SHIPPER MAY BE EXEMPT FROM SOME APPLICATION REQUIREMENTS ONLY AT THE HEAD'S DISCRETION.

NONSUBSTANTIVE CHANGES

TO CORRECT GRAMMAR.  
FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH FIFRA.  
TO ADD PUNCTUATION.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).

**§4-66-49 Experimental use permits; restrictions.**

(a) The head may limit the quantity of a pesticide covered by [a] **an experimental use** permit to a lesser quantity than requested if available information on effectiveness, toxicity, or other hazards is not sufficient to justify the scope of experimental use proposed in the application, or make other limitations in the permit as may be determined to be necessary for the protection of the public.

(b) A pesticide shipped or delivered solely for experimental use shall not be offered or advertised for general sale or use.

(c) Unless revoked by the head, **experimental use** permits shall be effective for a specified period of time, [**usually one year,**] depending upon the crop or site to be treated and the testing program submitted. Permits may be renewed upon request if circumstance warrants. **Applications for renewal of experimental use permits shall be submitted no less than thirty days prior to the permit expiration date.** [Eff[~~-~~] 7/13/81; comp 12/16/06; **am and comp \_\_\_\_\_**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25)

**SUBSTANTIVE CHANGES**

**ELIMINATES ESTIMATED LENGTH OF EXPERIMENTAL USE PERMITS ("usually one year"). RETAINS LANGUAGE INFORMING PERMITTEE THAT PERMIT IS EFFECTIVE FOR SPECIFIED TIME PERIOD. CLARIFIES THAT THE HEAD WILL ASSIGN THE APPROPRIATE TIME PERIOD.**

**ESTABLISHES A THIRTY-DAY TIME PERIOD TO APPLY FOR PERMIT RENEWAL.**

**NONSUBSTANTIVE CHANGES**

**FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).**

**§4-66-50 Experimental use permits; reports.** [The holder of a permit] At specific intervals to be prescribed by the head, the experimental use permittee shall submit periodic reports to the head regarding the status of the experimental program. ~~Reports shall be submitted at specific intervals as may be prescribed by the head (but shall report~~ The permittee shall immediately report to the head any incidents of unreasonable adverse effects on the environment from use, or from exposure to pesticides covered by an experimental use [permit)] permit. These periodic reports shall include the following information:

- (1) Quantity of the pesticide shipped and used during the reporting period;
- (2) Name and address of consignee and ultimate destination and amount of each shipment;
- (3) A summary of data on effectiveness, phytotoxicity, or other pertinent information regarding usefulness obtained during the permit period;
- (4) Any additional data obtained on residue or analytical methods obtained;
- (5) Any additional data obtained on toxicity or unreasonable adverse effects to humans, non-target animals, or the environment;
- (6) Any residue data obtained on the treated crop or site on which determination can be made regarding reentry into the treated area;
- (7) Disposition of unused pesticide; and
- (8) Such other information and data as may be prescribed by the head. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25)

**NONSUBSTANTIVE CHANGES**

**FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).**



**§4-66-51 Experimental use permits; monitoring and revocation.** (a) The head shall monitor the testing program if it is determined necessary for protection of the public health and environment. It shall be the responsibility of the ~~holder of a permit~~ **permittee** or person supervising the experiment to ~~report~~ **report to the head any** incidents or adverse reaction from use of, or exposure to the pesticide covered by an experimental use permit.

(b) The head shall revoke an experimental use permit if it is determined that the **permit** terms or conditions are being violated, or that ~~its~~ **the permit** terms or conditions are inadequate to avoid unreasonable adverse effects on humans or the environment.

**(c) Failure to comply with the terms or conditions of any State issued experimental use permit may subject the permittee, or person supervising the experiment, or both, to additional penalties as provided by law.** ~~[Eff[.] 7/13/81; am and comp 12/16/06; am and comp ]~~ (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25)

**SUBSTANTIVE CHANGES**

**CLARIFIES THAT PERMITTEE MUST IMMEDIATELY ADVISE THE HEAD OF ANY ADVERSE EFFECTS.**

**ADD ADVISEMENT TO PERMITEE THAT PENALTIES MAY RESULT FROM FAILURE TO ABIDE BY PERMIT CONDITIONS.**

**NONSUBSTANTIVE CHANGES**

**FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).**

**§4-66-52 Restricted use pesticide dealer and dealer representative.** (a) Persons who sell restricted use pesticides, ~~or~~ pesticides requiring an annual use permit, ~~or~~ special permit to apply restricted use pesticides by aircraft, shall obtain a ~~license~~ dealer sales permit for that purpose from the department. ~~which~~ The dealer sales permit shall expire on December 31 of each year and shall be renewed ~~on or~~ no less than thirty calendar days before January 1 of each year.

(b) ~~Application shall be made on a form prescribed by the head and shall include name and address of the applicant, location of the sales outlet, and name or names of the licensed pesticide dealer representative or representatives at each sales outlet.~~

~~(c)~~ Any manufacturer, registrant, or distributor of a restricted use pesticide who has no sales outlet ~~licensed~~ within this State, and who sells or distributes the pesticides directly to the user, shall obtain a Hawaii pesticide dealer ~~license~~ sales permit for its principal out-of-state location or outlet.

(c) Application for a restricted use pesticide dealer sales permit shall be made on forms prescribed by the head and shall include the name and address of the applicant, location of the sales outlet, and name or names of the restricted use pesticide dealer representative or representatives at each sales outlet.

(d) All ~~licensed sales outlets of~~ restricted use pesticides ~~dealer sales outlets~~ shall have a ~~licensed~~ pesticide dealer representative. The names of the ~~licensed~~ pesticide dealer representatives shall be submitted together with the application for ~~a license for~~ the dealer sales outlet permit. ~~The head shall be notified within 30 calendar days of any change in personnel in this.~~ Each restricted use pesticide dealer representative shall obtain a permit.

(e) Persons seeking to ~~be a licensed~~ obtain a pesticide dealer representative permit shall apply for examination on forms ~~provided~~ prescribed by the head. To qualify, an applicant shall pass a written examination at a time and place designated by the head. Examination shall test the applicant's knowledge of pesticide laws and regulations, pesticide hazards, proper usage, safe

storage and distribution and disposal methods. The restricted use pesticide dealer shall notify the head within thirty calendar days of any personnel change in the restricted use pesticide dealer representative position.

(f) A [license] permit issued to a restricted use pesticide dealer representative shall be valid for [5] five years. Renewal shall be by examination. Applications for renewal of restricted use pesticide dealer representative permits shall be submitted no less than thirty days prior to the permit expiration date.

(g) Every [licensed] restricted use pesticide dealer permitted to sell restricted use pesticides shall be responsible for the acts of all [licensed] pesticide dealer representatives and individuals employed in the solicitation, sale, distribution and handling of pesticides.

(h) Restricted use pesticide dealer sales outlets shall only sell restricted use pesticides to a certified pesticide applicator, and only those restricted use pesticides that are relevant to the certification category of the certified applicator.

(i) Any violation of the Act or this rule, whether committed by the dealer, [licensed] dealer representative, or by any other officer, agent, or employee of the dealer may result in suspension or revocation of the dealer's [license] permit or the [license of the] dealer [representative] representative's permit, or both, as well as [penalties pursuant to section 149A-41, Hawaii Revised Statutes] any other penalty provided by law. [Eff[-] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-11, 149A-17, 149A-18, 149A-19, 149A-33) (Imp: HRS §§149A-11, 149A-17, 149A-18, 149A-19, 149A-33)

SUBSTANTIVE CHANGES

ADDS REFERENCE TO SPECIAL PERMIT TO APPLY RESTRICTED USE PESTICIDES BY AIRCRAFT TO COMPORT WITH NEW RULE SECTION THAT SPECIFICALLY ADDRESSES PESTICIDE APPLICATION BY AIRCRAFT AS A SINGLE CATEGORY.

ESTABLISHES A THIRTY-DAY TIME PERIOD TO APPLY FOR

PERMIT RENEWAL.

ADDS STATUTORY LANGUAGE TO REMIND SELLERS THAT ONLY CERTIFIED APPLICATOR'S ARE ALLOWED TO PURCHASE RESTRICTED USE PESTICIDES AND THAT A PENALTY MAY RESULT FROM VIOLATION OF STATUTE.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
REARRANGED SUBSECTIONS.

TO ACCURATELY REFLECT STATUTORY LANGUAGE BY CHANGING "LICENSE" TO "PERMIT".

TO ADD PUNCTUATION.

TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).

**§4-66-53 Dealers' records and reports.**

(a) [~~Licensed dealers~~] Dealers permitted to sell or distribute restricted use pesticides shall keep a record of each sale, distribution, delivery, theft, spill, or any other activity affecting the amount of restricted use pesticides and pesticides requiring an annual permit pursuant to section [~~4-66-63~~] 4-66-63.1 and special permit to apply restricted use pesticides by aircraft pursuant to section 4-66-64 at each sales outlet on forms or through other media approved by the head.

(b) Records shall show the name and address of purchaser, a description of the activity affecting the amount of restricted use pesticide or pesticide requiring an annual permit or special permit, date of sale or other activity affecting the inventory amount, identity of the formulation or brand sold and quantity, and for sales of restricted use pesticides, the applicator's certification number, certification category and certification expiration date, intended use and the name or initials of the employee making the sale or record entry.

(c) A copy of the [~~licensed~~] permitted sales outlet's record shall be submitted to the head within [~~15~~] fifteen calendar days after the end of each calendar month for which the record is being kept. A copy shall be kept at the [~~licensed~~] permitted sales outlet where the sales were made for a period of one year.

(d) Failure to submit a copy of the permitted sales outlet's record to the head within fifteen calendar days after the end of each calendar month shall subject the dealer permitted to sell or distribute restricted use pesticides to penalties pursuant to section 149A-41, Hawaii Revised Statutes. [Eff[~~-~~] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-17, 149A-19, 149A-33) (Imp: HRS §§149A-17, 149A-19, 149A-33)

SUBSTANTIVE CHANGES

ADDS REFERENCE TO SPECIAL PERMIT TO APPLY RESTRICTED USE PESTICIDES BY AIRCRAFT TO COMPORT WITH NEW RULE

*SECTION THAT SPECIFICALLY ADDRESSES PESTICIDE APPLICATION BY AIRCRAFT AS A SINGLE CATEGORY.*

*ADDS NOTICE OF PENALTY THAT MAY RESULT FROM FAILURE TO TIMELY SUBMIT SALES RECORDS.*

*NONSUBSTANTIVE CHANGES*

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO ACCURATELY REFLECT STATUTORY LANGUAGE BY CHANGING  
"LICENSE" TO "PERMIT".  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-54 Storage, display, and [sales] sale of pesticides.** (a) No pesticide shall be stored, displayed, placed for sale or transported where food and food containers, feed, water for human or animal consumption, or any other items are likely to become contaminated and may create a hazard or cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects and aquatic life.

(b) Pesticides labeled for lawns, gardens and other outdoor uses shall be offered for sale only in garden supply centers or in other retail outlets that have a separate and distinct section for display of pesticides for outdoor use, as distinguished from pesticides formulated and registered for use inside the home.

(c) A prominent sign with legible bold print not less than one-half inch in height to read "pesticide products for garden and lawn or outdoor use only - it is unlawful and may be hazardous to use inside your home" shall be posted in the area where such lawn and garden pesticides are displayed and sold.

(d) Every retailer that sells or distributes pesticide products to the public shall prominently post within ten feet of any pesticide product display or sales area, a warning sign that includes:

- (1) Information regarding the proper handling, storage, and disposal of all pesticides sold;
- (2) Emergency telephone numbers to call in case of poisoning from the pesticides; and
- (3) A statement that use of any pesticide product in a manner inconsistent with its label is prohibited by law.

The warning sign shall be no less than seventeen inches by twenty two inches and contain lettering of sufficient size, no less than sixteen point bold type, which will enable the sign to be read from a distance of six feet under all lighting conditions normally encountered during business hours. [Eff[-]

7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §§149A-15.5, 149A-31, 149A-33) (Imp: HRS §§149A-15.5, 149A-31, 149A-33)

SUBSTANTIVE CHANGES

TO COMPLY WITH HRS 149A-15.5, WHICH WAS ENACTED IN 2007, REQUIRING THE DEPARTMENT TO ADOPT RULES REGARDING RETAIL PESTICIDE WARNING SIGNS.

NONSUBSTANTIVE CHANGES

TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).



**§4-66-55 Disposal of pesticides and empty pesticide containers.** (a) Pesticides and empty containers shall be disposed of in accordance with label directions and, if applicable, at a facility authorized to accept solid waste pursuant to chapter 11-58.1, Hawaii Administrative Rules, or in accordance with chapter 11-262, Hawaii Administrative Rules.

~~(b) [Owners of unused pesticides and empty containers shall notify or contact the head whenever information or assistance on the proper means of disposal is required.]~~

~~(c) Reusable empty pesticide containers shall not be used for purposes other than for refilling or repacking with the same pesticide; however, the head may prescribe and allow uses for other purposes should such containers be properly prepared.~~

~~(d) Unusable empty glass, plastic or metal pesticide containers shall be triple rinsed, if appropriate, with an appropriate solvent, punctured or crushed, unless otherwise directed by the label or the head.~~

~~(e) Triple-rinsed] If the disposal method is not specified on the label, the pesticide containers shall be triple-rinsed or equivalent, punctured, and disposed of in a [solid waste management facility approved by the state Department of Health or EPA, as appropriate] sanitary landfill.~~

~~[(f) Residue and rinse liquids should be added to spray mixtures and applied according to label directions.] [Eff[.] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §§149A-19, 149A-33) (Imp: HRS §§149A-19, 149A-33)~~

SUBSTANTIVE CHANGES

TO UPDATE RULES TO CONFORM TO FIFRA AND CURRENT PRACTICE OF INCLUDING DISPOSAL INFORMATION ON THE PESTICIDE LABEL.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-56 Certification of applicators.**

(a) No person shall apply restricted use pesticides unless certified in the category appropriate to the application or under the direct supervision of a certified applicator certified in the appropriate category. An applicator applying restricted use pesticides shall be certified [~~either as a commercial pesticide applicator or a private pesticide applicator~~] as:

- (1) A commercial pesticide applicator; or
- (2) A private pesticide applicator.

(b) Commercial pesticide applicators shall be further divided into categories and subcategories based on general patterns of use and sites where specific knowledge related to the use pattern or site is required to demonstrate competency. A person may be certified in as many categories or subcategories as necessary. The commercial pesticide applicator categories and subcategories are as follows:

(1) Category 1, agricultural pest control, which includes the following subcategories:

- (A) [~~A plant~~] Crop pest control.  
[~~subcategory for~~] For persons using or supervising the use of restricted use pesticides in production of agricultural [~~food and feed crops, including,~~] commodities, including but not limited to grains, seeds, soybeans, feed and forage crops, vegetables, fruits, trees and nuts, as well as non-crop agricultural lands;
- (B) [~~An animal~~] Animal pest control.  
[~~subcategory for~~] For persons using or supervising the use of restricted use pesticides to control pests on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, and poultry, and to [~~premises~~] places on or in which animals are confined; and doctors of veterinary medicine engaged in the business of application for hire, publicly holding themselves out as pesticide applicators or engaged in large scale use of

pesticides;

- (C) Soil and non-soil fumigant pest control. For persons using or supervising the use of restricted use pesticides to fumigate soil and to fumigate anything other than soil;
- (2) Category 2, forest pest control~~[, for]~~. For persons using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed ~~[producing areas]~~ production;
- (3) Category 3, ornamental and turf pest control~~[, for]~~. For persons using or supervising the use of restricted use pesticides to control pests ~~[of]~~ in the maintenance and production of ornamental plants, trees, shrubs, flowers and turf;
- (4) Category 4, aerial pest control~~[, for]~~. For persons using or supervising the use of restricted use pesticides applied by aircraft;
- (5) Category 5, aquatic pest control~~[, for]~~. For persons using or supervising the use of restricted use pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in ~~[section]~~ sections 4-66-56(8) and 4-66-56(9);
- (6) Category 6, right-of-way pest control~~[, for]~~. For persons using or supervising the use of restricted use pesticides in the maintenance of ~~[public roads, electric power lines, pipelines, railway rights-of-way or other similar areas,]~~ roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas, but excluding aquatic rights-of-way;
- (7) Category 7, industrial, institutional, and structural pest control, which includes the following subcategories:
- (A) Fumigation pest ~~[control, for]~~ control. For persons using or supervising the use of fumigant restricted use pesticides to control termites and other pests in or around food handling establishments,

human dwellings, institutions such as schools and hospitals, industrial sites such as warehouses, grain elevators, and any other structures and adjacent area, public or private, and for the protection of stored, processed or manufactured products. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 1, **Fumigation**;

- (B) Termite pest [~~control, for~~] **control**. **For** persons using or supervising the use of restricted use pesticides other than by fumigation to control subterranean and drywood termites in or around human dwellings, institutions such as schools and hospitals, hotels, industrial sites, and any other structures and adjacent area, public or private. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 3, **Termite**;
- (C) General pest [~~control, for~~] **control**. **For** persons using or supervising the use of restricted use pesticides to control pests, in or around food establishments, human dwellings, institutions such as schools, hospitals, industrial sites such as warehouses, and any other structures and adjacent area, public or private; and for the protection of stored, processed or manufactured products, excluding those applicators certified in category 3, **ornamental and turf pest control**, and subcategories [~~7A~~] **7(A)** and [~~7B~~] **7(B)**. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 2, **General Pest**;
- (D) Institutional pest [~~control, for~~] **control**. **For** persons using or

- supervising the use of restricted use pesticides exclusive of fumigants to control pests at institutions (e.g., schools, hotels, hospitals, warehouses, industrial sites), or establishments (e.g., grain elevators, restaurants, bakeries, fast food outlets) where they are employed;
- (E) Vault fumigation pest [~~control, for~~ control]. For persons using or supervising the use of restricted use pesticides [~~and fumigants in~~ to fumigate vaults or chambers, to control pests in agricultural commodities or structural materials, and including stored, processed or manufactured products, exclusive of those individuals licensed as pest control operators and certified in category [~~7a, 7b, or 7e~~ 7(A), 7(B), or 7(C)];
- (F) Specialty [~~categories, for~~ categories]. For persons using or supervising the use of restricted use pesticides where the scope of application is typically limited to a single active ingredient, a single site, a single facility or a single application method, such as using restricted use pesticides for controlling roots in sewer lines, prevention of pests on marine surfaces through the use of restricted use coatings, controlling wood pests through the use of pressure or submergence treatment, and persons who use chlorine gas;
- (8) Category 8, public health pest control[~~7 for~~]. For federal, state or other governmental employees and contractors using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance;
- (9) Category 9, regulatory pest control[~~7 for~~]. For state, [~~federal, federal,~~ federal, or other

government employees **and contractors** using or supervising the use of restricted use pesticides in the control of regulated pests prescribed under **the Hawaii Plant Quarantine Law**, chapter 150A, Hawaii Revised Statutes, and the Federal Plant **[Pest-Act] Protection Act, chapter 104, sections 7701-7786 of title 7, United States Code;**

- (10) Category 10, demonstration, research and instructional pest control~~[, for]~~. **For** persons who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides; and
- (11) Category 11, chemigation pest control~~[, for]~~. **For** persons using or supervising the use of restricted use pesticides applied through an irrigation system. Certification in this category requires concurrent certification in category ~~[1A]~~ **1(A)**, 2, 3, or 10.

(c) Private pesticide applicators ~~[are]~~ **shall be** further divided into categories based on general patterns of use and sites where specific knowledge related to the use pattern or site is required to demonstrate competency. A person may be certified in as many categories as necessary ~~[, upon qualification]~~. The categories are as follows:

- (1) Category 1, general agricultural pest control~~[, for]~~. **For** private applicators using or supervising the use of restricted use pesticides in the production of agricultural commodities;
- (2) Category 2, agricultural pest control with fumigants~~[, for]~~. **For** private applicators using or supervising the use of restricted use pesticides for soil fumigation in the production of an agricultural commodity and the application of restricted use pesticides for fumigation of agricultural products. Certification in this category requires

- concurrent certification in category 1, general agricultural pest control; and
- (3) Category 3, chemigation ~~for~~. For persons conducting agricultural pest control, with pesticides applied through irrigation systems. Certification in this category requires concurrent certification in category 1, general agricultural pest control. [Eff[~~-~~] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §149A-33, 40 CFR [~~§§171.3, 171.5~~] §§171.5, 171.101) (Imp: HRS §149A-33, 40 CFR [~~§§171.3, 171.5~~] §§171.5, 171.101)

#### SUBSTANTIVE CHANGES

*ENTIRE SECTION UPDATED TO REFLECT AMENDMENT OF 40 CFR PART 171, WHICH TOOK EFFECT MARCH 6, 2017. EPA HAS RECOGNIZED THAT CERTIFIED APPLICATORS OF RESTRICTED USE PESTICIDES ARE THE ONES RESPONSIBLE FOR PROTECTING HUMAN HEALTH AND THE ENVIRONMENT DURING APPLICATION OF THESE HIGHER RISK PRODUCTS. THE EPA RULES HAVE BEEN AMENDED TO STRENGTHEN SAFETY TRAINING AND RAISE COMPETENCY STANDARDS FOR CERTIFICATED APPLICATORS. NEW REQUIREMENTS FOR DIRECT SUPERVISION OF NON-CERTIFIED APPLICATORS BY CERTIFIED APPLICATORS HAVE BEEN ADDED. CERTIFICATION CATAGORIES HAVE BEEN ADDED OR AMENDED. STRICTER CERTIFICATION EXAMINATION PROCEDURES HAVE BEEN ESTABLISHED. APPLICANTS MUST DEMONSTRATE THE ABILITY TO READ AND UNDERSTAND PESTICIDE LABELING TO ENSURE PROPER USE OF PESTICIDE PRODUCTS. RECORDKEEPING REQUIREMENTS HAVE BEEN EXPANDED.*

#### NONSUBSTANTIVE CHANGES

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*



**§4-66-57 General standards for certification of applicators.** (a) Applicants for certification shall be at least ~~[18]~~ **eighteen** years ~~[old]~~ of age and shall possess a history of honesty, truthfulness, financial integrity and fair dealing;

(b) Competence in the use and handling of **restricted use** pesticides shall be determined by receiving a passing score of seventy per cent or better on a written examination ~~[and, as appropriate, upon demonstration]~~ or any alternate methods employed by the department to determine applicator competency, or both. Examinations are based upon standards ~~[which]~~ that meet or exceed those set forth in this ~~[subsection]~~ section and section 4-66-58. The examination shall test knowledge applicable to the ~~[classification and]~~ certification category ~~[and, if applicable, to the]~~ or subcategory ~~[into which the person is classified]~~, or both, and to the pesticide or class of pesticides covered by the requested certification.

(c) The department shall ensure that examinations meet the following standards:

- (1) Examinations shall be presented and answered in writing;
- (2) Examinations shall be proctored by an individual designated by the department;
- (3) At the time of examination, each person seeking certification shall present a valid, government-issued photo identification or other similarly reliable form of identification as proof of identity and age;
- (4) Each person seeking certification shall be given instruction on examination procedure before beginning the examination;
- (5) Examinations shall be kept secure before, during, and after the examination period. No portion of the examination or associated reference materials may be copied or retained by any person other than persons authorized by the department;
- (6) There shall be no verbal or non-verbal communication with anyone other than the proctor during the examination period;
- (7) Only reference materials approved by the department may be used during the

examination; and

(8) In addition to the written examination the department may employ additional methods for determining applicator competency.

(d) Applicants shall demonstrate ~~[appropriate knowledge for the certification or certifications requested.]~~ practical knowledge of the principles and practices of pest control. The knowledge shall include the following areas:

- (1) ~~[An understanding of the general format and terminology of pesticide labels and labeling; an understanding of instructions, warnings, symbols, classification of the product, other information that may appear on the label, and the necessity for following label directions;]~~ Label and labeling comprehension. Familiarity with pesticide labels and labeling; an understanding of label function, format and terminology; an understanding of instructions, warnings, symbols, and other common labeling requirements; an understanding that it is a violation of federal and State law to use any pesticide in a manner inconsistent with its labeling; an understanding of labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator; an understanding of the meaning of product classification; and recognizing the difference between mandatory and advisory labeling language;
- (2) ~~[An understanding of pesticide toxicity, common exposure routes and hazard to humans; precautions necessary to guard against injury; need for and use of protective clothing and equipment; symptoms of pesticide poisoning; first aid to be followed in pesticide poisoning; proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers including precautions to be taken to prevent children from having access to pesticides and pesticide containers; and procedures for confining and cleaning up]~~

~~pesticide spills;]~~

Safety measures. An understanding of the risks of acute toxicity, chronic toxicity, and long-term effects of pesticides; an understanding that risk is a function of exposure and pesticide toxicity; recognition of ways in which dermal, inhalation, and oral exposure may occur; knowledge of common types and causes of pesticide mishaps; precautions to prevent injury to applicators and other individuals in or near treated areas; the need for and proper use of personal protective equipment and clothing; symptoms of pesticide poisoning; first aid and other procedures to be followed in case of a pesticide mishap; proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers; and precautions to be taken to prevent children from having access to pesticides and pesticide containers;

- (3) **Environment.** An understanding of the potential environmental consequences of the use and misuse of restricted use ~~[pesticides,~~ for example, the role of such factors as climatic conditions, types of terrain, soil and substrate, the presence of various non-target organisms, and the potential for surface and ground water contamination;] pesticides; an understanding of the influence of weather and other indoor and outdoor climatic conditions; the influence of types of terrain, soil, or other substrate; presence of fish, wildlife, and other non-target organisms; and, drainage patterns;
- (4) ~~[The ability to identify pests and knowledge of the importance of the biology of pests relevant to the applicant's areas of operations;]~~

**Pests.** An understanding of the importance of correctly identifying target pests and selecting the proper pesticide product for effective pest control; and, verifying that the labeling does not prohibit the use of the

- product to control the target pest;
- (5) **Pesticides.** Knowledge of the characteristics of various [~~kinds of~~] pesticides, including [~~types of formulations, compatibility, persistence, mode of action, toxicity, hazard and residues associated with use;~~] the types of pesticides; types of formulations; compatibility, synergism, persistence, and animal and plant toxicity of the formulations; hazards and residues associated with use; factors that influence effectiveness or lead to problems such as pesticide resistance; and, dilution procedures;
- (6) [~~Knowledge of the relative importance of pesticides, when they should and should not be used, and the factors which influence their effectiveness;~~]
- [~~(7)~~] **Application equipment.** Practical knowledge of type, maintenance, use, and calibration of pesticide application equipment and an understanding of advantages and limitations of [~~various types~~] each type of equipment. Additional knowledge of calibration shall be required of applicants using or supervising the use of highly specialized equipment [~~such as aircraft~~];
- (7) **Application methods.** Practical knowledge and understanding of selecting the appropriate application method; an understanding of methods used to apply various forms and formulations of pesticides; knowledge of which application method to use in a given situation; how selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse; a practical understanding of pesticide drift and runoff, and the resulting effect on non-target organisms, such as wildlife, apiaries, humans, human habitation, lakes, rivers, wetlands, coastal waters, surface waters and ground waters; and knowledge of techniques, formulations, and methods to prevent drift and pesticide loss into the environment;

- (8) [~~A practical understanding of how to apply pesticides in various formulations, such as dusts, wettable powders, emulsifiable concentrates, solutions, and gases, together with a knowledge of application techniques, including timing, safety precautions and restrictions;~~]  
Laws, rules, and regulations. Knowledge of all applicable federal and State laws, rules, and regulations;
- (9) [~~A practical understanding of pesticide drift potential and its effect on non-target organisms, including but not limited to, wildlife, apiaries, and human habitation; and techniques and formulations which reduce drift;~~]  
Responsibilities of supervisors of non-certified applicators. Knowledge of the responsibilities of certified applicators supervising non-certified applicators using restricted use pesticides; understanding and complying with section 171.201 of title 40, Code of Federal Regulations (2017); knowledge and understanding of the recordkeeping requirements of pesticide safety training for non-certified applicators who use restricted use pesticides under the direct supervision of a certified applicator; providing use-specific written instructions to non-certified applicators who use restricted use pesticides under the direct supervision of a certified applicator; and explaining pertinent federal and State laws, rules and regulations to non-certified applicators who use restricted use pesticides under the direct supervision of a certified applicator; and
- (10) [~~Knowledge of applicable federal and state laws and rules; and~~]  
Professionalism. Knowledge and understanding of the importance of maintaining chemical security for restricted use pesticides; how to effectively communicate information about pesticide exposures and risks; and, appropriate product stewardship for certified

applicators.

~~[(11) Applicants shall demonstrate knowledge of the common features of pest organisms and characteristics of damage they cause, pest development and biology as it may be relevant to problem identification and control, and the ability to identify pests relevant to the applicator's areas of operations.] [Eff[.] 7/13/81; am and comp 12/16/06; am and comp [.] ] (Auth: HRS §149A-33, 40 CFR [§§171.4, 171.5] §§171.5, 171.103) (Imp: HRS §149A-33, 40 CFR [§§171.4, 171.5] §§171.5, 171.103)~~

#### SUBSTANTIVE CHANGES

*ENTIRE SECTION UPDATED TO REFLECT AMENDMENT OF 40 CFR PART 171, WHICH TOOK EFFECT MARCH 6, 2017. EPA HAS RECOGNIZED THAT CERTIFIED APPLICATORS OF RESTRICTED USE PESTICIDES ARE THE ONES RESPONSIBLE FOR PROTECTING HUMAN HEALTH AND THE ENVIRONMENT DURING APPLICATION OF THESE HIGHER RISK PRODUCTS. THE EPA RULES HAVE BEEN AMENDED TO STRENGTHEN SAFETY TRAINING AND RAISE COMPETENCY STANDARDS FOR CERTIFICATED APPLICATORS. NEW REQUIREMENTS FOR DIRECT SUPERVISION OF NON-CERTIFIED APPLICATORS BY CERTIFIED APPLICATORS HAVE BEEN ADDED. CERTIFICATION CATAGORIES HAVE BEEN ADDED OR AMENDED. STRICTER CERTIFICATION EXAMINATION PROCEDURES HAVE BEEN ESTABLISHED. APPLICANTS MUST DEMONSTRATE THE ABILITY TO READ AND UNDERSTAND PESTICIDE LABELING TO ENSURE PROPER USE OF PESTICIDE PRODUCTS. RECORDKEEPING REQUIREMENTS HAVE BEEN EXPANDED.*

#### NONSUBSTANTIVE CHANGES

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-58 Specific standards for certification of applicators.** [Applicants] In addition to satisfying the requirements of section 4-66-57, applicants for certification shall demonstrate ~~competence appropriate to the~~ through written examinations practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides for each particular category or subcategory of certification applied for, as follows:

(a) Commercial applicators

(1) [~~For~~] Category 1, agricultural pest control, which includes the following subcategories:

(A) [~~Plant~~] Crop pest control applicators shall demonstrate practical knowledge of the crops [~~grown~~], grasslands, and non-crop agricultural lands and the specific pests on [~~these crops~~] those areas on which the applicator may be using restricted use pesticides. Applicators in this category shall demonstrate operational knowledge concerning soil and water problems, pre-harvest intervals, [~~reentry~~] restricted entry intervals, phytotoxicity, [~~and~~] potential for environmental contamination, non-target injury and [~~community~~] other problems resulting from the use of restricted use pesticides in agricultural areas; [~~and~~]

(B) Animal pest control applicators shall demonstrate practical knowledge of such animals and [~~their~~] the animals' associated pests. [~~Special understanding is needed concerning~~] The required knowledge includes specific pesticide toxicity and residue potential, [~~to host animals~~] and the hazards associated with factors such as formulation, application techniques, age of animals, stress

and extent of treatment[, and  
potential for pesticide residues in  
meat and other animal products]; and

(C) Soil and non-soil fumigant pest control applicators shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications, including label and labeling comprehension, worker protection measures, restricted entry periods, recordkeeping requirements, and safety measures to minimize adverse health effects. Applicators shall also demonstrate an understanding of how applicators and bystanders can be exposed to fumigants, signs and symptoms of exposure to fumigants, first aid procedures, emergency preparedness, the ability to calculate buffer zones, air concentrations of fumigant, and preparation of site-specific fumigant management plans and post-application summaries.

(2) [Forest] Category 2, forest pest control applicators shall demonstrate practical knowledge of the [extent and] types of forests, forest nurseries, seed production and pest involved. [Applicators in this category shall demonstrate knowledge of] The required knowledge shall include the cyclic occurrence of certain pests, population dynamics[, and the vulnerability of biota to pesticide application] as a basis for programming pesticide applications, the relevant organisms causing harm and the organisms' vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of application



method, proper use of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. The applicator shall demonstrate an understanding of the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures. Because forest stands frequently include watersheds [and], aquatic situations, and harbor wildlife, the applicator shall demonstrate knowledge of pest control methods that will minimize the possibility of secondary problems such as surface or ground water contamination and unintended effects on wildlife. ~~Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use];~~

- (3) ~~Ornamental~~ Category 3, ornamental and turf pest control applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, flowers [and], groundcover, and turf, including ~~recognition~~ knowledge of potential phytotoxicity[, drift, and] due to the wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control[-], and for non-target exposures. ~~Applicators~~ Because of the frequent proximity of human habitations to application activities, applicators in this category shall also demonstrate ~~special~~ practical knowledge of ~~the hazards to humans, pets, and other domestic animals associated with the restricted use pesticides utilized in this~~

~~category;~~ application methods that will minimize or prevent hazards to humans, pets, and other domestic animals;

- (4) ~~[Aerial]~~ Category 4, aerial pest control applicators shall demonstrate ~~[broad knowledge of the principles of drift and drift control, including the effects of weather, application equipment and techniques, pesticide formulations and adjuvants. Applicators in this category shall also demonstrate knowledge of the potential for an aerial application to cause unreasonable adverse effects to the environment, such as to beneficial insects, wildlife, livestock, non target plants and people in or near sensitive areas such as schools, parks, playgrounds, hospitals, rest homes, churches and residential areas;~~ practical knowledge of pest problems and pest control practices associated with performing aerial application of restricted use pesticides. Applicators shall also demonstrate the ability to read and understand labeling requirements specific to aerial applications, how to choose, operate and maintain aerial application equipment, knowledge of factors to consider before and during aerial application such as weather conditions, wind velocity, and how to minimize drift, demonstrate competency in performing an aerial pesticide application, and knowledge of restricted use pesticide recordkeeping requirements;
- (5) ~~[Aquatic]~~ Category 5, aquatic pest control applicators shall demonstrate ~~[understanding of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of~~

~~restricted use pesticides used to control aquatic pests. Applicators in this category shall demonstrate special awareness of the possibility of oxygen depletion and an understanding of possible pesticide effects on fishes, birds, beneficial arthropods, and desirable plants and other organisms, which may be present in aquatic environments.]~~ practical knowledge of the characteristics of various aquatic use situations, and the potential for adverse effects on non-target plants, fish, birds, beneficial insects and other organisms in the immediate aquatic environment and downstream. [They] Applicators shall also demonstrate [an understanding] the principles of limited area applications;

- (6) [Right-of-way] Category 6, right-of-way pest control applicators shall demonstrate [knowledge of a wide variety of environments because rights-of-way can traverse many different terrains, including waterways. Applicators in this category shall demonstrate knowledge of problems of runoff, drift, and excessive foliage destruction and shall be able to correctly identify target and non-target organisms.] practical knowledge of the types of environments (terrestrial and aquatic) traversed by rights-of-way, recognition of target pests, and techniques to minimize non-target exposure, runoff, drift, and excessive foliage destruction. [They] Right-of-way pest control applicators shall also demonstrate knowledge of the [nature of herbicides.] potential for phytotoxicity due to a wide variety of plants and pests to be controlled, and for persistence beyond the intended period of pest control. [Aerial]

~~applicators]~~ Applicators doing right-of-way work shall demonstrate knowledge of application equipment, containment of the pesticide within the right-of-way area, and ~~[special]~~ drift control methods and procedures;

- (7) ~~[Industrial]~~ Category 7, industrial, institutional, and structural ~~[and health-related]~~ pest control applicators shall demonstrate ~~[special knowledge of a wide variety of pests, including their life cycles, as well as types of formulations appropriate for the control and methods of application that avoid contamination of food and habitation and do not cause hazards to humans and pets. Specific requirements may vary depending on the subdivisions of this category. As human exposure is frequently a potential problem in this area, applicators must demonstrate knowledge of the toxicity of the pesticides used and factors which may constitute a hazard.]~~ a practical knowledge of industrial, institutional, and structural pests, including recognizing those pests and signs of the pest's presence, habitats, life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators shall demonstrate practical knowledge of types of formulations appropriate for control of industrial, institutional and structural pests, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts of outdoor application. Applicators in this category shall also demonstrate knowledge of the pesticide labeling of the products typically used in ~~[their]~~ the

~~applicator's~~ operations, including hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws [~~and~~], rules, and regulations;

- (8) [~~Public~~] ~~Category 8, public~~ health pest control applicators shall demonstrate [~~knowledge of pests of public health importance, vector disease relationships, and etiology of disease-host relationships. Because a wide variety of pests are involved, public health pest control applicators must demonstrate knowledge and recognition of these pests, as well as an understanding of their life cycles and habitats. Applicators in this category shall demonstrate familiarity with a great variety of environmental conditions ranging from streams to dwellings. They~~] ~~practical knowledge of pests that are important vectors of disease, including recognizing the pests and signs of the pests' presence, habitats, life cycles, biology and behavior as it may be relevant to problem identification and control. The required knowledge also includes how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures. Applicators shall~~ [~~also~~] demonstrate competency in non-chemical control methods such as sanitation, waste disposal, and drainage[~~+~~]. ~~Applicators shall also demonstrate knowledge of hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws, rules, and regulations;~~
- (9) [~~Regulatory~~] ~~Category 9, regulatory~~ pest control applicators shall demonstrate [~~broad general~~] ~~practical~~ knowledge of [~~applicable laws, safety,~~] regulated

pests, [~~pesticides and the impact of restricted use pesticides on the environment. Applicators in this category shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Applicators shall demonstrate knowledge over and above that required by their immediate duties, because emergency measures are frequently required and individual judgments in new situations must be made; and~~] applicable laws relating to quarantine and other regulation of regulated pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. Applicators shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of regulated pests;

- (10) [~~Demonstration~~] Category 10, demonstration, research, and instructional pest control applicators [~~are required to meet particularly high standards since their use of pesticides is presumed to be exemplary. Broad knowledge is required of pests and population levels of pests occurring where demonstrations are to be conducted. Applicators in this category shall demonstrate competency regarding basic concepts of ecology, understanding of pesticide-organism interactions, the importance of integrating pesticide use with other methods, and the potential for various secondary problems.~~] shall demonstrate practical knowledge of the potential problems, pests, and population levels reasonable expected to occur in a demonstration situation and the effects of restricted use pesticides on target and non-target organisms. Applicators shall also demonstrate competency in each

pest control category applicable to the applicator's demonstration. For purposes of demonstrating proper use of a particular pesticide product, ~~[Out of state]~~ out-of-state technical representatives visiting or working in the State for thirty ~~(30)~~ days or less per year ~~[to demonstrate proper use of a particular product]~~ need not be certified in this category if certified in an equivalent category by a jurisdiction authorized by the EPA to issue certifications. ~~[and upon notification to the head of their qualifications and intent to apply restricted use pesticides in the State]~~ The out-of-state technical representative shall present his or her certification credentials to the head for an equivalency determination prior to applying any restricted use pesticides in the State; and

- (11) ~~[Chemigation]~~ Category 11, chemigation pest control applicators shall demonstrate practical knowledge of labeling requirements specific to chemigation, how to choose, operate and maintain application equipment, the use of metering devices, strategies and equipment for backflow prevention, and procedures for irrigation system assessment for the distribution consistency of water, or chemicals, or both.

(b) Private ~~[Applicators:]~~ applicators

- (1) ~~[Agricultural]~~ Category 1, general agricultural pest control applicators shall demonstrate practical knowledge of agricultural commodities grown in the State and the specific pests ~~[of]~~ relevant to these commodities ~~[on which the applicators may use restricted use pesticides]~~. Applicators in this category shall demonstrate practical

knowledge ~~[concerning relevant soil and water problems,]~~ of how to avoid contamination of ground and surface waters, demonstrate an understanding of preharvest intervals, phytotoxicity, and restricted entry intervals and entry restricted periods and areas. ~~[potential for environmental contamination and non-target injury.]~~ The applicator shall also demonstrate a practical understanding of specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities, and the relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment. General agricultural pest control applicators shall demonstrate a complete understanding of the Worker Protection Standard, part 170 of title 40, Code of Federal Regulations;

- (2) ~~[Agricultural fumigation]~~ Category 2, agricultural pest control fumigant applicators shall demonstrate practical knowledge of ~~[the use of personal protective equipment for fumigation, general safety procedures, including posting, restricted entry and aeration.]~~ pest problems and pest control practices associated with soil and non-soil fumigant applications. ~~[Further, applicators]~~ Applicators in this category shall demonstrate knowledge of ~~[emergency procedures and application techniques appropriate to various situations.]~~ label and labeling comprehension, safety measures to minimize adverse health effects, characteristics of soil and non-soil fumigants, selecting appropriate application methods and timing, factors



that influence fumigant activity, worker protection measures, personal protective equipment and how to use it properly, restricted entry periods, posting requirements, recordkeeping requirements, an understanding of how applicators and bystanders can be exposed to fumigants. Applicators shall also demonstrate knowledge of signs and symptoms of exposure to fumigants, first aid procedures, emergency preparedness, the ability to calculate buffer zones, air concentrations of fumigant, and preparation of site-specific fumigant management plans and post-application summaries; and

- (3) [Agricultural] Category 3, agricultural chemigation pest control applicators shall demonstrate practical knowledge of labeling requirements specific to chemigation, how to choose, operate and maintain application equipment, the use of metering devices, strategies and equipment for backflow prevention, and procedures for irrigation system assessment for distribution consistency of water, or chemicals, or both. Applicators in this category shall also demonstrate a complete understanding of the Worker Protection Standard, part 170 of title 40, Code of Federal Regulations.

(c) Any certified commercial pesticide applicator or certified private pesticide applicator who fails to cooperate with an inspection conducted by the department pursuant to section 149A-36, Hawaii Revised Statutes, may be denied issuance or renewal of certification, or may have certification suspended or revoked. [Eff[.] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §149A-33, 40 CFR §§171.4, 171.5) (Imp: HRS §149A-33, 40 CFR [§§171.4, 171.5] §§171.5 171.103, 171.105)

SUBSTANTIVE CHANGES

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NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).

**§4-66-59 Repealed.** [~~Eff. 7/13/81;~~ **[R** 12/16/06]

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-60 Certification procedures; certificate renewal.** (a) The procedures for certifying commercial applicators and renewal of commercial applicator certifications are as follows:

- (1) For initial certification of commercial applicators and renewal of commercial applicator certificates, [application] the applicant shall be at least eighteen years of age. Application shall be made on forms [provided] prescribed by the head. Forms are available at the department or on-line at <https://hdoa.hawaii.gov>. The completed form shall be submitted to the department, with the appropriate fee. Once the form is received by the department, and the appropriate fee has been paid, the applicant will be scheduled for examination. To gain entrance to the testing facility, an applicant shall present a valid, government-issued photo identification or other similarly reliable form of identification as proof of identity and age. The applicant for certification as a commercial applicator shall pass a written examination with a score of seventy per cent or better[, at a time and place designated by the head]. [Instruction and] The core examination shall cover the general standards and procedures specified in [sections] section [4-66-57(c)] 4-66-57. [and 4-66-57(d) in a core examination and, if applicable, section 4-66-58 in a category] Category or subcategory [examination] examinations shall cover the specific standards specified in section 4-66-58(a).
- (2) To be eligible to take category or subcategory examinations, the applicant shall first obtain a passing score on the core examination. If the applicant fails to pass the core examination, that applicant is eligible to be re-examined no sooner than fourteen [(14)] calendar days after the date of the failed examination. A passing score on the core examination will be valid for six

months after the date of examination. ~~[The applicant may use a passing score on the core examination to be eligible to take category or subcategory examinations.]~~

- (3) Certification in a category or subcategory under section 4-66-58 requires a passing score of seventy per cent or better on ~~[both the core examination and]~~ the category or subcategory examination. If the applicant fails to pass any examination, that applicant is eligible to be re-examined no sooner than fourteen calendar days after the date of the failed examination. A passing score on the category or subcategory examination will not be valid unless the applicant ~~[also attains]~~ first obtains a passing score on the core examination. ~~[If]~~ A certificate may be issued if the applicant passes the core examination and any other category and subcategory examinations [and], meets all other requirements for certification, ~~[a certificate will be issued subject to compliance with]~~ and complies with all other State [agency] and federal requirements.
- (4) For renewal of commercial applicator certificates, application for renewal ~~[may]~~ shall be made no sooner than ninety ~~[+90]~~ days before and no later than thirty (30) days after expiration of certification. ~~[To qualify for renewal prior to December 31, 2006, an applicant should contact the Department's pesticides program to determine the number of hours of training credit needed to qualify for recertification under policies valid through that date. Beginning January 1, 2007, an]~~ In order for a certified applicator's certification to continue without interruption, the certified applicator shall be recertified before the expiration of his or her current certification. An applicant for recertification ~~[must]~~ shall complete one of the following procedures:
- (A) ~~[Accumulate]~~ Continuing education. A

certified applicator may be found eligible for recertification upon successfully completing a continuing education program by accumulating the prescribed number of hours of training approved for each category or subcategory in which the applicator is certified. The minimum number of training hours required for each specific category is listed in the table below. Completion of the training must be verified by documentation approved by the head. The training must be completed prior to the expiration date on the applicator's certificate. ~~[The minimum number of training hours for each specific category is listed in the table below.]~~ Training must be pertinent to the category or subcategory for which the applicant is seeking to renew certification and shall be a continuing education program of the quality, content, and quantity that will ensure the applicator continues to maintain the level of competency required by sections 4-66-57 and 4-66-58.

Category	Applicator	Hours of Training Required
1[A](A)	[Plant] Crop Pest Control . . . . .	25
1[B](B)	Animal Pest Control . . . . .	20
1(C)	Soil and Non-soil Fumigant Pest Control .	30
2	Forest Pest Control . . . . .	30
3	Ornamental and Turf Pest Control . . . . .	30
4	Aerial Pest Control . . . . .	25
5	Aquatic Pest Control . . . . .	25
6	Right-of-Way Pest Control . . . . .	30
7[A](A)	Fumigation Pest Control . . . . .	25*
7[B](B)	Termite Pest Control . . . . .	20
7[C](C)	General Pest Control . . . . .	30
7[D](D)	Institutional Pest Control . . . . .	30
7[E](E)	Vault Fumigation Pest Control . . . . .	25*
7[F](F)	Specialty Categories . . . . .	20

8	Public Health Pest Control. . . . .	24
9	Regulatory Pest Control . . . . .	20
10	Demonstration, Research, & Instructional Pest Control. . . . .	30
11	Chemigation <u>Pest Control</u> . . . . .	5*

\*For asterisked items, five [~~(5)~~] hours must be in specific subject matter directly related to the category; or

- (B) Written examination. Pass a written examination as provided in section 4-66-60(a)(1).
- (5) [~~If~~] A certificate may be renewed if the applicant has accumulated the required number of credits prior to the expiration date on the applicator's certificate, or passed the written examination [~~and~~], meets all other requirements for certification, [~~a certificate may be issued~~] and complies with any other State and federal requirements.
- (b) The [~~procedure~~] procedures for certifying private applicators [~~is~~] and renewal of private applicator certifications are as follows:
  - (1) For initial certification of private applicators and renewal of private applicator certificates, [~~application~~] the applicant shall be at least eighteen years of age. Application shall be on forms [~~provided~~] prescribed by the head. Forms are available at the department or on-line at <https://hdoa.hawaii.gov>. The completed form shall be submitted to the department, with the appropriate fee. Once the form is received by the department, and the appropriate fee has been paid, the applicant will be scheduled for examination. To gain entrance to the testing facility, an applicant shall present a valid, government-issued photo identification or other similarly reliable form of identification as proof of identity and age. [~~To qualify, the~~] The applicant for certification as a private applicator shall pass a written examination with a score of seventy per cent or better[~~, at a time and~~

~~place designated by the head~~]. The examination shall cover the general standards specified in ~~[sections 4-66-57(c) and 4-66-57(d)]~~ section 4-66-57 and the specific ~~[applicable]~~ standards specified in section 4-66-58(b).

- (2) The applicant shall pass a written examination for private agricultural pest control applicator with a score of seventy per cent or better to be eligible to take agricultural fumigation applicator or agricultural chemigation pest control applicator examinations. A passing score on the private agricultural pest control applicator examination will be valid for six months after the date of examination. If the applicant fails to pass ~~[the]~~ any examination, that applicant is eligible to be re-examined no sooner than fourteen ~~[14]~~ calendar days after the date of the failed examination. If the applicant passes the examination ~~[and]~~, meets all of the other requirements for certification, and complies with any other State and federal requirements, a certificate may be issued.

- ~~[(2)]~~ (3) ~~[Application for]~~ For renewal of ~~[a]~~ private applicator ~~[certification]~~ certificates, application for renewal shall be made no sooner than ninety ~~[-90]~~ days before ~~[and no later than thirty [-30] days after]~~ expiration of certification. In order for a certified applicator's certification to continue without interruption, the certified applicator shall be recertified before the expiration of his or her current certification. ~~[To qualify, the]~~ An applicant ~~[must]~~ for recertification shall complete one of the following procedures:

- (A) ~~[Accumulate]~~ Continuing education. A certified applicator may be found eligible for recertification upon successfully completing a continuing education program by accumulating twenty ~~[-20]~~ hours of training credits.



Applicators certified in agricultural fumigation, [and] or agricultural chemigation, or both, must accumulate five [(5)] hours of training specific to each applicable category. Completion of training must be verified by documentation approved by the head. The training must be completed prior to the expiration date shown on the applicator's certificate[. — If the applicant has accumulated the required number of training credits, and meets all other requirements for certification, a certificate may be issued.] and the continuing education program shall be of the quality, content, and quantity that will ensure the applicator continues to maintain the level of competency required by sections 4-66-57 and 4-66-58; or

- (B) Written examination. Pass a written examination as provided in section 4-66-60(b)(1).
- (4) [~~Procedure for certification of non-English proficient private applicators. Non-English proficient private applicators may be certified to use a specific product by passing an oral examination in English administered by the head or any person approved by the head, with a score of seventy percent or better at a time and place designated by the head. A translator may be present at the applicant's option and expense. Instruction and examination shall cover the standards specified in sections 4-66-57(c) and 4-66-57(d) and the appropriate standards in §4-66-58(b). If the applicant fails to pass the examination, that applicant is eligible to be re-examined no sooner than fourteen [(14)] calendar days after the date of the failed examination. The applicant shall also demonstrate, through an actual pesticide application, the ability to apply pesticides according to label directions and understand sources of advice and guidance~~

~~necessary for safe and proper application of pesticides covered. If the applicant passes the examination and the demonstration, a certificate shall be issued. Any certificate issued pursuant to this paragraph shall be limited to five restricted use products chosen by the applicant. Renewal of certificates issued under this section can be granted only through the procedures described in this paragraph.]~~

Certification of private applicator under special circumstances. An applicant for private applicator certification who is unable to pass a written examination may request that the department provide certain testing accommodations. The head shall review requests for testing accommodation on a case-by-case basis. The applicant may be offered the opportunity for testing under special circumstances if the head finds the accommodation request is reasonable and will not result in that public safety being compromised. A finding by the head that the requested accommodation is unreasonable or that public safety may be compromised by providing the requested accommodation shall be in writing. Restrictions may be placed on a private applicator who successfully passes certification testing under special circumstances as deemed necessary by the head for the protection of the public. The head shall be solely responsible for determining what constitutes successful passage of certification testing under special circumstances. Any applicant aggrieved by a determination of the head relative to certification of private applicator under special circumstances may request a hearing as provided in section 149A-14(d), Hawaii Revised Statutes.

(c) Procedures to obtain approval of certification credits for continuing education training classes are as follows[-]:

- (1) A training class sponsor or provider shall submit a written application ~~[for]~~ to the head, requesting approval of certification credits for each training ~~[classes to the head at least fourteen (14) days before the scheduled date of each]~~ class no less than thirty calendar days prior to the scheduled date of each class. Appropriate subject matter for training classes is set forth in sections 4-66-57 and 4-66-58.
- (2) The written application shall include the name and contact information of the sponsor or provider, instructor credentials, a ~~[class description (outline)]~~ substantive class description or outline of sufficient detail so evaluation of the course content can be made, a sample of any materials to be provided to the participants, who may attend the class, if any fee will be charged, class evaluation method, and the dates, times, and location of the class. The head shall ~~[issue]~~ approve or deny credits within ten ~~[(10)]~~ business days following receipt of the ~~[request]~~ written application for certification credit.
- (3) Approval of training class credit shall be valid for two years, after which time a new written application requesting approval of certification credit shall be submitted.
- (4) The number of credits issued for a training session shall be based on an evaluation [of course content, instructor qualifications, and the duration of the course ~~[(normally 1 credit for each 50 minutes)]~~] by the head. The ~~[head may adjust the]~~ number of credits ~~[assigned]~~ approved by the head may be adjusted if department monitoring of the course demonstrates that content and duration either exceeds or fails to meet course description as approved ~~[by the head]~~.
- (5) Credits shall be awarded to those applicators whose attendance at the session is documented. The training class sponsor or

provider shall maintain a record of attendance at the approved sessions.

(6) The record shall show the name, certification number, arrival and departure time for each attendee desiring credits toward certification renewal. The ~~[sponsor will]~~ training class sponsor or provider shall forward the record of attendance to the head within ~~[10]~~ ten days following the course. Failure to timely forward the training class attendance record to the head may result in denial of future training class or certification credit.

(7) Requests to obtain training credit towards certification renewal from sources other than in-person training class attendance may be approved on a case-by-case basis at the sole discretion of the head.

(d) All certifications and renewals issued under this section shall be valid for five years following date of issuance, unless revoked. The date of issuance is the date the examination was passed. Application for renewal shall be on forms ~~[provided]~~ prescribed by the head. Forms are available at the department or on-line at <https://hdoa.hawaii.gov>.

(e) Changes to Certificates and Replacement Certificates. A certification is valid only for the name, category, address, and employer, if applicable, shown on the certificate or recorded on the application for certification or certification renewal. Any changes to the certificate must be reported to the head by the certificate holder within thirty ~~[(30)]~~ days of ~~[the]~~ any change ~~[, on forms provided by the head]~~. Forms to update the certificate holder's information shall be prescribed by the head. Forms are available at the department or on-line at <https://hdoa.hawaii.gov>. Failure to notify the head within thirty days of any change in name, applicator category, address, or employer may result in certification revocation, or may subject the certificate holder to additional penalties as provided by law. Applicators may request a replacement certificate to update information, to replace lost certificates, and to consolidate certifications on different certificates. The replacement certificate

with appropriate changes shall be issued after payment of appropriate fees. A replacement certificate will expire on the same date as the original certification[~~], unless]. If the [applicant] certificate holder requests [~~consolidating certifications~~] consolidation of certificates onto a single certificate, then those certifications will expire on the earliest certificate's expiration date.~~

(f) Should the certification of any commercial applicator or private applicator be suspended or revoked, the certified applicator shall participate in a remedial education program prior to applying for reinstatement of certification. [Eff[~~-~~] [07] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §149A-33, 40 CFR [§171.7] §§171.105, 171.107) (Imp: HRS §149A-33, 40 CFR [§171.7] §§171.105, 171.107)

#### SUBSTANTIVE CHANGES

*ENTIRE SECTION UPDATED TO REFLECT AMENDMENT OF 40 CFR PART 171, WHICH TOOK EFFECT MARCH 6, 2017. EPA HAS RECOGNIZED THAT CERTIFIED APPLICATORS OF RESTRICTED USE PESTICIDES ARE THE ONES RESPONSIBLE FOR PROTECTING HUMAN HEALTH AND THE ENVIRONMENT DURING APPLICATION OF THESE HIGHER RISK PRODUCTS. THE EPA RULES HAVE BEEN AMENDED TO STRENGTHEN SAFETY TRAINING AND RAISE COMPETENCY STANDARDS FOR CERTIFICATED APPLICATORS. NEW REQUIREMENTS FOR DIRECT SUPERVISION OF NON-CERTIFIED APPLICATORS BY CERTIFIED APPLICATORS HAVE BEEN ADDED. CERTIFICATION CATAGORIES HAVE BEEN ADDED OR AMENDED. STRICTER CERTIFICATION EXAMINATION PROCEDURES HAVE BEEN ESTABLISHED. APPLICANTS MUST DEMONSTRATE THE ABILITY TO READ AND UNDERSTAND PESTICIDE LABELING TO ENSURE PROPER USE OF PESTICIDE PRODUCTS. RECORDKEEPING REQUIREMENTS HAVE BEEN EXPANDED.*

#### NONSUBSTANTIVE CHANGES

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-61 Conditions on the use of restricted use pesticides by non-certified applicator.** A person may apply a restricted use pesticide, provided that:

- (1) The person is under the direct supervision of an applicator certified in [a] each category [appropriate] applicable to the restricted use pesticide being used[;].
- (2) The [person shall be given specific] certified applicator shall give the non-certified applicator use-specific written instructions [by the certified applicator for applying the pesticide, safety measures to be taken (including emergency procedures), and contacting the certified applicator at any time during the application;] in a manner the non-certified applicator can understand. The use-specific instructions shall include labeling directions, precautions, and requirements applicable to the site, method of application, and pesticide used. The certified applicator shall ensure that equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition and can reasonably be used without risk by the non-certified applicator. The certified applicator shall ensure that the non-certified applicator has access to the applicable product labeling at all times during use, and if the labeling requires that personal protective equipment be worn, the certified applicator shall ensure that the non-certified applicator has the appropriate clean personal protective equipment available and the equipment is used correctly for its intended purpose. The certified applicator shall ensure that the means to immediately communicate with the certified applicator is available to each non-certified applicator.
- (3) The certified applicator shall be responsible for all violations of [the Act] chapter 149A, Hawaii Revised Statutes and this rule[; and]
- (4) The non-certified applicator shall meet the minimum age requirement to use restricted

use pesticides under the supervision of a certified applicator. The non-certified applicator shall also meet the pesticide safety training requirements for agricultural handlers pursuant to the Worker Protection Standard, part 170 of title 40, Code of Federal Regulations.

- (5) The label of the pesticide being used [~~does~~] must not prohibit its use by a non-certified [~~person~~] applicator under the direct supervision of a certified applicator[, and in the manner prescribed by the label].
- (6) Failure to abide by chapter 149A, Hawaii Revised Statutes and this rule may result in certification revocation, or subject the certification holder to additional penalties as provided by law. [Eff[~~-~~] 7/13/81; am and comp 12/16/06; am and comp \_\_\_\_\_] (Auth: HRS §149A-33, 40 CFR [~~§171.6~~]§171.201) (Imp: HRS §149A-33, 40 CFR [~~§171.6~~]§171.201)

#### SUBSTANTIVE CHANGES

ENTIRE SECTION UPDATED TO REFLECT AMENDMENT OF 40 CFR PART 171, WHICH TOOK EFFECT MARCH 6, 2017. EPA HAS RECOGNIZED THAT CERTIFIED APPLICATORS OF RESTRICTED USE PESTICIDES ARE THE ONES RESPONSIBLE FOR PROTECTING HUMAN HEALTH AND THE ENVIRONMENT DURING APPLICATION OF THESE HIGHER RISK PRODUCTS. THE EPA RULES HAVE BEEN AMENDED TO STRENGTHEN SAFETY TRAINING AND RAISE COMPETENCY STANDARDS FOR CERTIFICATED APPLICATORS. NEW REQUIREMENTS FOR DIRECT SUPERVISION OF NON-CERTIFIED APPLICATORS BY CERTIFIED APPLICATORS HAVE BEEN ADDED. CERTIFICATION CATAGORIES HAVE BEEN ADDED OR AMENDED. STRICTER CERTIFICATION EXAMINATION PROCEDURES HAVE BEEN ESTABLISHED. APPLICANTS MUST DEMONSTRATE THE ABILITY TO READ AND UNDERSTAND PESTICIDE LABELING TO ENSURE PROPER USE OF PESTICIDE PRODUCTS. RECORDKEEPING REQUIREMENTS HAVE BEEN EXPANDED.

#### NONSUBSTANTIVE CHANGES

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*



**§4-66-62 Certified pesticide applicator**

**recordkeeping.** (a) Certified pesticide applicators shall keep records of all [~~applications of~~] restricted use [~~pesticides applied,~~] pesticide applications at [~~their~~] his or her principal place of business.

(b) These records must be kept for a period of two years and shall be made available for inspection and copying by the head during reasonable working hours.

(c) Recordkeeping information shall include:

- (1) Brand or common name of pesticide product applied;
- (2) EPA registration number;
- (3) Type of formulation;
- (4) Per cent active ingredient;
- (5) Scientific or common name of target pest;
- (6) Dilution rate;
- (7) Total amount of pesticide used;
- (8) Total area covered;
- (9) Time and date of application;
- (10) Address or location of treated site;
- (11) Name of certified applicator and his or her certification number;
- (12) Crop, commodity, stored product or other site;
- (13) Restricted entry interval and whether posting and oral notification are required; and
- (14) Any other information [~~that~~] the head deems [~~to be~~] necessary.

~~[(c)]~~ (d) Commercial applicators [~~applying~~] that apply any pesticide in agricultural operations [~~must~~] shall furnish a written record containing the following information to the agricultural employer before [~~the~~] any pesticide is applied:

- (1) The specific location and description of the treated area;
- (2) Time and date of application;
- (3) Product name, EPA registration number, and active ingredient(s);
- (4) Restricted entry interval;
- (5) Whether posting and oral notification are required; and
- (6) Any other product-specific requirements on the product labeling concerning protection of workers or other persons during or after application.

(e) 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 under the direct supervision of the certified applicator has met the pesticide safety training requirements for agricultural handlers pursuant to the Worker Protection Standard, part 170 of title 40, Code of Federal Regulations.

(f) Failure to comply with the recordkeeping requirements may result in certification revocation and subject the certified pesticide applicator to additional penalties as provided by law. [Eff[ ] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §149A-33, 40 CFR [§171.7] §171.201) (Imp: HRS §149A-33, 7 CFR §110, 40 CFR [§§170.224, 171.7] §171.201)

SUBSTANTIVE CHANGES

ENTIRE SECTION UPDATED TO REFLECT AMENDMENT OF 40 CFR PART 171, WHICH TOOK EFFECT MARCH 6, 2017. EPA HAS RECOGNIZED THAT CERTIFIED APPLICATORS OF RESTRICTED USE PESTICIDES ARE THE ONES RESPONSIBLE FOR PROTECTING HUMAN HEALTH AND THE ENVIRONMENT DURING APPLICATION OF THESE HIGHER RISK PRODUCTS. THE EPA RULES HAVE BEEN AMENDED TO STRENGTHEN SAFETY TRAINING AND RAISE COMPETENCY STANDARDS FOR CERTIFICATED APPLICATORS. NEW REQUIREMENTS FOR DIRECT SUPERVISION OF NON-CERTIFIED APPLICATORS BY CERTIFIED APPLICATORS HAVE BEEN ADDED. CERTIFICATION CATAGORIES HAVE BEEN ADDED OR AMENDED. STRICTER CERTIFICATION EXAMINATION PROCEDURES HAVE BEEN ESTABLISHED. APPLICANTS MUST DEMONSTRATE THE ABILITY TO READ AND UNDERSTAND PESTICIDE LABELING TO ENSURE PROPER USE OF PESTICIDE PRODUCTS. RECORDKEEPING REQUIREMENTS HAVE BEEN EXPANDED.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).

§4-66-63 Repealed. [~~Eff. 7/13/81~~] [R 12/16/06]

NONSUBSTANTIVE CHANGES

TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).

**§4-66-63.1 Annual Use Permit.** (a) A pesticide may be designated[~~, by rule,~~] **by the board** as requiring an annual use permit for purchase if the department determines that existing controls over the pesticide may be inadequate to prevent potential unreasonable adverse effects on humans or the environment and that tracking and controlling use is appropriate[~~+~~].

(b) An annual use permit is required for the purchase and use of picloram. Additional pesticides may be designated as requiring an annual use permit as provided in section 4-66-63.1(a). **The board, upon designation of any additional pesticide product as requiring an annual use permit, shall maintain a list of such pesticide products at the department Office of the Chairperson. The list of pesticide products that require an annual use permit shall also be posted on the department's website.**

(c) Application for an annual **use** permit shall be on forms [~~provided~~] **prescribed** by the head, and shall include the applicant's name and address, name of applicator, acreage amount to be treated, location, and other information as the head may require. **Forms are available at the department or on-line at <https://hdoa.hawaii.gov>.** An application and permit may be amended during the permit [~~year~~] **period** to add acreage, other locations, additional quantity of pesticide or other changes, as appropriate.

(d) In determining whether to issue an annual use permit, the potential use described in an application will be reviewed for compliance with the pesticide's label directions. The head shall determine the quantity of pesticide to be authorized for each permit and other permit conditions necessary to prevent unreasonable adverse effects to humans or the environment.

**(e) Failure to comply with the terms or conditions of any annual use permit may result in permit revocation and subject the permittee to additional penalties as provided by law.** [Eff and comp 12/16/06; **am and comp** ] (Auth: HRS §149A-19) (Imp: HRS §149A-32.5)[~~+~~]

**SUBSTANTIVE CHANGES**

ADDING OR DELETING PESTICIDE PRODUCTS THAT REQUIRE AN ANNUAL USE PERMIT BY RULE HAS PROVEN TO BE A MANAGEMENT PROBLEM DUE TO THE COMPLEXITY OF RULE AMENDMENT. IT CAN TAKE YEARS TO ADD OR DELETE A PESTICIDE FROM THE ANNUAL USE PERMIT LIST.

THE DEPARTMENT PROPOSES TO MAINTAIN THE LIST OF PESTICIDE PRODUCTS THAT REQUIRE AN ANNUAL USE PERMIT ON-LINE AND AT THE OFFICE OF THE CHAIRPERSON. ANY CHANGE TO THE ANNUAL USE PERMIT LIST REQUIRES BOARD APPROVAL. THE PUBLIC WILL HAVE THE OPPORTUNITY TO PROVIDE COMMENTS AT THE BOARD MEETING.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).

**§4-66-64 Conditions and limitations on restricted use pesticide application [and sale] by aircraft.** (a)

No person shall apply a restricted use pesticide by aircraft except by special permit issued by the head and under the following conditions and limitations:

- (1) ~~[A written statement shall be filed by an applicant for such permit]~~ Application for a special permit to apply restricted use pesticides by aircraft shall be made on forms ~~[provided]~~ prescribed by the head~~[.]~~. Forms are available at the department or on-line at <https://hdoa.hawaii.gov/>;
- (2) The ~~[statement]~~ application shall include date, name, address and certification number of applicant, purpose of aerial treatment, pesticide formulation, dosage, method of aerial treatment ~~[and]~~, the proposed number of treatments to be made, ~~and~~ a sketch or map ~~[to indicate]~~ that indicates general wind directions, proposed site or sites to be treated, homes, roadways, waterways, and crop plantings in the vicinity;
- (3) The head may refuse to issue a special permit ~~to apply restricted use pesticides by aircraft~~ if it is determined that the proposed aerial treatment may cause unreasonable adverse effects to humans or the environment or will create a hazard. All refusals shall be in writing and the reasons for refusal stated;
- (4) A special permit ~~[issued under this subsection]~~ ~~to apply restricted use pesticides by aircraft~~ shall specify the time period for which the special permit is valid. The head may specify and limit a special permit ~~to apply restricted use pesticides by aircraft~~ to cover a single, multiple, or continual treatments when conditions are not expected to change or vary during subsequent treatments that are conducted in the same designated area or areas;
- (5) Any special permit ~~[issued under this subsection]~~ ~~to apply restricted use pesticides by aircraft~~ may be canceled ~~or revoked~~ by the

head before its stated expiration date for reasonable cause. Such cancellation or revocation shall be in writing and reasons for cancellation or revocation stated;

- (6) The head shall be notified [at least] no less than twenty-four hours [before] in advance of the aerial treatment [is made]; and
- (7) The issuance of a special permit to apply a restricted use pesticide by aircraft [under this subsection] shall not relieve the permittee from the penalty provisions of the Act or any liability for any damage or contamination of crops or plants, animals, [man] humans, and the environment resulting from the aerial treatment or contamination of crops or plants, animals, [man] humans, and the environment resulting from the [aerial treatment] application of restricted use pesticides by aircraft.

(b) The following provisions shall apply to the operating conditions of aircraft[, power rigs, mist blowers, and other] and equipment used to apply pesticides by aircraft:

- (1) Spray equipment on aircraft shall be leakproof. Spray nozzles shall be equipped with a device to prevent dribble when spray is turned off;
- (2) [Self-propelled power rigs used for interrow or broad cast applications shall be equipped with a pressure control device and a pressure gauge; and
- (3) Power rigs, mist blowers, and other All aerial pesticide dispersal equipment shall be inspected and maintained in good working order according to the manufacturer's instructions; and [with no excessive leaks along the pesticide material flow route.]
- (3) Aircraft used to apply restricted use pesticides, and aircraft operators, shall comply with all Federal Aviation Administration Regulations.

(c) [No person shall apply a restricted use pesticide unless certified in the category appropriate to the application or unless under the direct

~~supervision of a certified applicator certified in the appropriate category.] The head may add further conditions as deemed necessary for the protection of the public.~~

(d) ~~[Licensed sales outlets shall sell restricted use pesticides relevant only to the certification category of the certified applicator.] Failure to comply with the terms or conditions of any special permit to apply restricted use pesticides by aircraft may subject the permittee, or person supervising the aerial application, or both, to additional penalties as provided by law. [Eff[ ] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §149A-33) (Imp: HRS §149A-33)~~

SUBSTANTIVE CHANGES

*THIS SECTION WAS UPDATED TO REFLECT AMENDMENT OF 40 CFR PART 171, WHICH TOOK EFFECT MARCH 6, 2017. EPA CERTIFICATION CATEGORIES WERE AMENDED TO INCLUDE AN AERIAL PEST CONTROL APPLICATOR CATEGORY. THE SECTION AS CURRENTLY COMPOSED ADDRESSES AERIAL APPLICATION AND APPLICATION VIA OTHER MECHANICAL METHODS. THE CURRENT SECTION WAS DIVIDED INTO TWO SEPARATE SECTIONS: ONE ADDRESSING AERIAL APPLICATIONS; AND ONE ADDRESSING PESTICIDE APPLICATION BY MEANS OTHER THAN AIRCRAFT. THE APPLICATION METHOD OTHER THAN AIRCRAFT WAS MOVED TO A NEW SECTION (4-66-64.1).*

*COMPLIANCE WITH FAA REGULATIONS WAS ADDED.*

*THE HEAD HAS BEEN GIVEN THE ABILITY TO ADD CONDITIONS TO THE SPECIAL PERMIT TO APPLY PESTICIDES BY AIRCRAFT AS DEEMED NECESSARY TO PROTECT THE PUBLIC.*

*PENALTY SECTION WAS ADDED FOR FAILING TO COMPLY WITH PERMIT CONDITIONS.*

NONSUBSTANTIVE CHANGES

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*



**§4-66-64.1 Conditions and limitations on pesticide application by means other than aircraft. (a)**  
No person shall apply a restricted use or nonrestricted use pesticide except under the following conditions and limitations:

- (1) All pesticide applications shall be made in accordance with the product label;
- (2) Spray equipment nozzles shall be equipped with a device to prevent leakage when spray is turned off;
- (3) Self-propelled power rigs used for inter-row or broad-cast applications shall be equipped with a pressure control device and a pressure gauge;
- (4) All reasonable methods necessary to minimize the risk of off-target pesticide product movement shall be utilized; and
- (5) Power rigs, mist blowers, and other equipment used to disperse any pesticide product shall be inspected and maintained in good working order according to the manufacturer's instructions.

[Eff and comp ] (Auth: HRS §149A-33)  
(Imp: HRS §149A-33)

SUBSTANTIVE CHANGES

*THIS SECTION WAS ADDED TO ADDRESS PESTICIDE APPLICATION METHODS BY MEANS OTHER THAN AIRCRAFT TO ACCOMMODATE THE SEPARATION OF AERIAL APPLICATIONS FROM OTHER MECHANICAL APPLICATION METHODS.*

NONSUBSTANTIVE CHANGES

*FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).*

**§4-66-65 Repealed.** [~~Eff. 7/13/81;~~ **R** 12/16/06]

*NONSUBSTANTIVE CHANGES*

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*

**§4-66-66 Fees.** (a) The head shall set forth and collect fees for licensing of [~~dealers~~] **restricted use pesticides**, licensing of **nonrestricted use pesticides**, **permitting of restricted use pesticide dealers**, **approval of nonchemical pest control devices**, and certification of applicators as follows:

- (1) [~~A fee of \$270 shall be assessed for each product licensed in State for the three year licensing periods beginning on January 1, 2007 and January 1, 2008.~~] A fee of [~~\$330~~] **\$930** shall be assessed for each product licensed in the State for [~~the three year licensing period beginning January 1, 2009 and~~] each three-year **licensing period [thereafter]**. A licensee who desires to continue to have the license in effect shall submit an application for renewal and [~~\$330~~] **\$930** for each pesticide product license to be renewed[+]. **A one-time fee of \$330 shall be assessed for each nonchemical pest control device submitted for approval.**
- (2) A fee of [~~\$250~~] **\$500** shall be assessed annually for the license of each principal sales outlet and a fee of [~~\$100~~] **\$200** for each branch sales outlet of restricted use pesticide dealers[+].
- (3) A fee of [~~\$25~~] **\$50** shall be assessed for each examination taken for certification or renewal of certification[+].
- (4) A fee of [~~\$25~~] **\$50** will be assessed for the issuance of a replacement applicator certificate or dealer representative license[+].
- (5) A fee of [~~\$50~~] **\$100** shall be assessed for the issuance of an initial pesticide applicator certificate or dealer representative license for [~~restricted use~~] **restricted use pesticides** [+], **which shall be** valid for [~~5~~] **five** years[+].
- (6) A fee of [~~\$50~~] **\$100** shall be assessed for renewal of a pesticide applicator certificate or dealer representative license [+], **which shall be** valid for [~~5~~] **five** years[+].
- (7) A fee of [~~\$25~~] **\$50** shall be assessed for each examination taken for pesticide dealer

representative license.

- (8) A fee of up to \$.25 per page [shall] may be assessed to copy documents.
- (9) A fee of up to [\$25] \$50 per hour may be assessed for [each hour of] educational services, testing, or training provided by the department staff, or independent contractors hired by the department to provide such services.

(b) Fees shall be waived, [with] upon approval of the head, for personnel of state agencies [and], the University of Hawaii, and other government agencies, who apply restricted use pesticides for quarantine purposes, public health and forestry pest control, utility and roadway maintenance, [and] research, and demonstration. The head may waive or reduce fees based upon demonstrated financial hardship.

[Eff[.] 7/13/81; am and comp 12/16/06; am and comp ] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

SUBSTANTIVE CHANGES

ALL FEES HAVE BEEN DOUBLED. LAST INCREASE WAS 2006. THIS WILL INCREASE REVENUE TO THE PESTICIDE USE REVOLVING FUND ESTABLISHED BY HRS §149A-13.5 MAKING MORE FUNDS AVAILABLE FOR TRAINING AND EDUCATIONAL PROGRAMS. COMPARED TO OTHER STATES, EVEN BY DOUBLING THE CURRENT RATES, HAWAII LICENSING PRICES REMAIN LOW.

ALLOWS THE HEAD TO REDUCE OR WAIVE FEES UPON DEMONSTRATED NEED.

ALLOWS THE DEPARTMENT TO HIRE INDEPENDENT CONTRACTOR TO PROCTOR EXAMS OR CONDUCT EDUCATIONAL CLASSES.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE. TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING MANUAL (2016).

**§4-66-66.1 Enforcement action and penalty assessment schedule.** (a) In proposing enforcement [responses] actions, the department [will] may use the enforcement action and penalty assessment schedule dated October 24, 2006, which is located at the end of this chapter and made a part of this section by reference. In selecting an appropriate penalty [within the penalty ranges shown], the department shall consider the factors in section 149A-41[(b)(3)], Hawaii Revised Statutes.

(b) Notwithstanding subsection (a), the department is not limited to the sanctions shown in the enforcement action and penalty assessment schedule. [and may, in] In its discretion, the department may deny, cancel, suspend, or revoke a permit, license or certificate, as provided in [Hawaii Revised Statutes] sections 149A-14, 149A-18 and 149A-34, Hawaii Revised Statutes, separately or [respectively, and] in conjunction with the enforcement action[,]. The department may assess an appropriate penalty as provided in the enforcement action and penalty assessment schedule and consistent with [section] sections 141-7 and 149A-41[(b)(3)], Hawaii Revised Statutes.

(c) For private applicators and other persons referred to in section 149A-41(b)(2), Hawaii Revised Statutes, the penalty assessment shall apply after the written warning or citation requirement of section 149A-41(b)(2) has been satisfied. [Eff[-] 7/13/81; comp 12/16/06] (Auth: HRS §§149A-20, 149A-33, 149A-41) (Imp: HRS §§149A-20, 149A-41)

SUBSTANTIVE CHANGES

DELETED REFERENCE TO PENALTY ASSESSMENT SCHEDULE THAT WAS REPLACED WITH REVISED ENFORCEMENT ACTION AND PENALTY ASSESSMENT SCHEDULE THAT COMPORTS WITH STATUTORY LANGUAGE SET FORTH IN HRS §§141-7, 149A-20, 149A-33, 149A-41.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.

*TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).*



Amendments to and compilation of chapter 66,  
title 4, Hawaii Administrative Rules, on the Summary  
Page dated \_\_\_\_\_, 2017 were adopted on  
\_\_\_\_\_, 2017 following public hearings held  
on \_\_\_\_\_, 2017, \_\_\_\_\_, 2017, and  
\_\_\_\_\_, 2017 after public notice was given in  
the Honolulu Star Advertiser on \_\_\_\_\_, 2017.

They shall take effect ten days after filing with  
the Office of the Lieutenant Governor.

\_\_\_\_\_  
SCOTT E. ENRIGHT  
Chairperson  
Board of Agriculture

\_\_\_\_\_  
DAVID Y. IGE  
Governor  
State of Hawaii

Dated:  
\_\_\_\_\_

\_\_\_\_\_  
Filed

APPROVED AS TO FORM:

\_\_\_\_\_  
DEPUTY ATTORNEY GENERAL



ENFORCEMENT ACTION AND PENALTY ASSESSMENT SCHEDULE

**Addendum to section 4-66-66.1 of the  
Hawaii Administrative Rules**

Effective: \_\_\_\_\_, 2017

Any person who violates the Act as set forth in Chapter 149A, Hawaii Revised Statutes, or any rule promulgated thereunder, shall be subject to the following enforcement action and penalty:

**A. WARNING NOTICE - First Violation**

Any person who violates Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, may, at the department's discretion, be issued a written warning notice citing the specific violation and any necessary corrective action to be taken.

Any person who subsequently violates Chapter 149A, Hawaii Revised Statutes, after receipt of a written Warning Notice, or following issuance of a citation for a first violation, shall be deemed a subsequent occurrence for which increased penalties may apply.

**B. ADMINISTRATIVE PENALTIES**

(1) Upon finding of any violation of Chapter 149A, Hawaii Revised Statutes, or rule issued thereunder, by a person acting in his or her capacity as:

(a) A licensee or registrant of any pesticide product pursuant to Chapter 149A, Hawaii Revised Statutes;

(b) A certified commercial pesticide applicator;

(c) A licensee or permittee authorized to sell or distribute restricted use pesticides; or

(d) A wholesaler, retailer, or other distributor of any pesticide product,

that person may be assessed an administrative penalty of not more than \$5,000.00 per offense.

Generally, the penalty to be assessed upon finding of violation by persons set forth in paragraph B(1)(a)-(d) above, may include, but is not limited to:

1st Occurrence:

Monetary penalty: Up to \$5,000.00;

Certificate suspension: Up to 6 months;

2nd Occurrence:

Monetary penalty: Up to \$5,000.00;

Certificate suspension: Up to 12 months;

3rd or more Occurrences:

Monetary penalty \$5,000.00;

Certificate suspension: 12 months.

(2) Upon finding of any subsequent violation of any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, by any person who is a certified private pesticide applicator, or any other person not included in paragraph (1) (a)-(d) above, where the subsequent violation is related to the use of pesticides while on property owned or rented by that person, or the person's employer, may be assessed an administrative penalty of not more than \$1,000.00 per offense.

Generally, the penalty to be assessed upon finding of violation by persons set forth in paragraph B(2) above, may include, but is not limited to:

1st Subsequent Occurrence:

Monetary penalty: Up to \$1,000.00;

Certificate suspension: Up to 6 months;

2nd Subsequent Occurrence:

Monetary penalty: Up to \$1,000.00;

Certificate suspension: Up to 12 months;

3rd or more Subsequent Occurrences:

Monetary penalty: \$1,000.00;

Certificate suspension: 12 months.

(3) Upon finding of any subsequent violation of any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, by any person who is a

certified private pesticide applicator, or any other person not included in paragraph (1)(a)-(d) above, where the subsequent violation is related to licensing, transport, sale, distribution, or application of a pesticide for commercial purposes may be assessed an administrative penalty of not more than \$5,000.00 per offense.

Generally, the penalty to be assessed upon finding of violation by persons set forth in paragraph B(3) above, may include, but is not limited to:

1st Subsequent Occurrence:

Monetary penalty:	Up to \$5,000.00;
Certificate suspension:	Up to 12 months;

2nd Subsequent Occurrence:

Monetary penalty:	Up to \$5,000.00;
Certificate suspension:	Up to 24 months;

3rd or more Subsequent Occurrences:

Monetary penalty:	\$5,000.00;
Certificate suspension:	36 months.

(4) Upon finding of any violation of any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, by persons other than those set forth in paragraphs B(1)(a)-(d), B(2), and B(3) above, may be assessed an administrative penalty, including but not limited to:

Any occurrence:

Monetary penalty:	Up to \$500.00;
Certificate suspension:	Up to 12 months.

(5) Factors to be considered by the department in determining the appropriate amount of an administrative penalty shall include the:

- (a) Seriousness of the offense;
- (b) Quantity of offenses;
- (c) Violation history;
- (d) Appropriateness of the penalty to the size of the business;
- (e) Effect an administrative penalty may have on the business's ability to continue operation;
- (f) Adverse effects to humans or the environment resulting from offense;

(g) Corrective action taken and timeliness of corrective action; and

(h) Administrative penalties assessed against similarly situated persons.

(6) In addition to monetary penalties, administrative enforcement actions may include:

(a) Certificate suspension or revocation for not more than thirty-six months;

(b) License suspension or revocation for not more than twelve months;

(c) Permit suspension or revocation for not more than twelve months; and

(7) Seizure, stop-sale, or removal from sale of any pesticide or nonchemical pest control device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of Chapter 149A, Hawaii Revised Statutes.

### **C. CRIMINAL PENALTIES**

(1) Any person who is found to have knowingly violated any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, who:

(a) Has registered or licensed any pesticide product pursuant to Chapter 149A, Hawaii Revised Statutes;

(b) Is a certified commercial pesticide applicator;

(c) Is licensed or permitted to sell or distribute restricted use pesticides; or

(d) Is a wholesaler, retailer, or other distributor of any pesticide product,

shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$25,000.00, or imprisoned for not more than one year, or both.

The term "knowingly" shall have the same meaning as defined in section 702-206(2)(a)-(c), Hawaii Revised Statutes (2014).

(2) Any person who is found to have knowingly violated any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, who:

(a) Is a certified private pesticide applicator; or,

(b) Other person not included in paragraph (1) above,

shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000.00, or imprisoned for not more than one year, or both.

The term "knowingly" shall have the same meaning as defined in section 702-206(2)(a)-(c), Hawaii Revised Statutes (2014).

(3) Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, shall be fined not more than \$10,000.00, or imprisoned for not more than three years, or both.

The term "intent to defraud" shall have the same meaning as defined in section 708-800, Hawaii Revised Statutes (2014).

(4) Liabilities. When construing and enforcing the provisions of Chapter 149A, Hawaii Revised Statutes, and rules promulgated thereunder, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person, shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

(5) General penalty. Any person violating any of the provisions of chapter 149A, Hawaii Revised Statutes for which violation a penalty is not otherwise provided, or violating any rule of the department of agriculture, shall be fined not more than \$500.00 per offense.

[Eff ; comp ]

(Auth: HRS §§141-7, 149A-20, 149A-33, 149A-41)

(Imp: HRS §§141-7, 149A-20, 149A-33, 149A-41)

SUBSTANTIVE CHANGES

PENALTY MATRIX WAS REPLACE WITH STATUTORY LANGUAGE THAT  
LISTS ALL CURRENTLY AVAILABLE PENALTIES.

NONSUBSTANTIVE CHANGES

FOR CLARITY AND CONSISTENCY THROUGHOUT THE RULE.  
TO COMPLY WITH THE ADMINISTRATIVE RULES DRAFTING  
MANUAL (2016).

DEPARTMENT OF AGRICULTURE

Amendment and Compilation of Chapter 4-66  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. §§4-66-1 to 4-66-24 are amended.
2. §§4-66-26 to 4-66-41 are amended.
3. §§4-66-42.1 to 4-66-58 are amended.
4. §§4-66-60 to 4-66-62 are amended.
5. §§4-66-63.1 to 4-66-64 are amended.
6. A new §4-66-64.1 is added.
7. §§4-66-66 to 4-66-67 are amended.
8. Chapter 66 is compiled.

[YELLOW] = DELETE  
BLUE = ADD