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February 15, 2023

TO: Advisory Committee on Plants and Animals

FROM: Jonathan Ho
Inspection and Compliance Section Chief
Plant Quarantine Branch

SUBJECT: Request for Review and Recommendation on the Proposed Changes to Hawaii Administrative Rules, Chapter 4-72, entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules" to among other things:

- A. Implement Plant Quarantine Interim Rule 22-1, Regarding Quarantine Restrictions on the Coconut Rhinoceros Beetle (CRB) and CRB host materials;
- B. Implement Fees for Inspections and the Processing and Issuance of Permits;
- C. Establish Authority to Prohibit the Movement of Infested Materials Within the State;
- D. Include Penalties for Non-compliance; and
- E. Make Other Changes for Clarity or Simplification and Other Non-substantive Changes Correcting Grammar, Punctuation, or Typeface.

A summary of the proposed changes is included below.

I. Introduction

The Hawaii Department of Agriculture (HDOA) Plant Quarantine Branch (PQB) is proposing various amendments to Chapter 4-72, Hawaii Administrative Rules (HAR) primarily to implement Plant Quarantine Interim Rule 22-1 to implement quarantine restrictions on the Coconut Rhinoceros Beetle (CRB) and CRB host materials. The proposed amendments also include implementing inspection fees pursuant to Act 273, SLH 2010; implementing fees for the processing and issuance of permits; providing authority to prohibit movement of infested materials; inclusion of penalties; and other changes for clarity or simplification and other non-substantive changes correcting grammar, punctuation, or typeface.



II. Summary of Proposed Changes to 4-72, HAR:

Listed below is a summary of the proposed changes to Chapter 4-72, HAR and the reasons for the proposed amendment.

A copy of the proposed rules detailing the exact changes in Ramseyer format is included as Appendix A. For clarity on Ramseyer format, text that is underlined is a proposed addition and text that is bracketed and ~~strikethrough~~ is a proposed deletion.

1. Chapter 4-72 title is amended by adding "and Pest Host Material". Chapter 4-72 is amended by adding headings for "Subchapter 1 General Provisions" and "Subchapter 2 Intrastate Restrictions".
2. Amending Section 4-72-1, Objective by clarifying that Chapter 4-72 is implementing Chapter 141, Hawaii Revised Statutes (HRS) and by deleting "their plant or commodity hosts" and adding "infested or infected pest host material".
3. Amending Section 4-72-2 Definitions as follows:
 - a. The definition "Board" is corrected.
 - b. The definition "Department" is moved to appear in alphabetical order.
 - c. The definition "Chief" is deleted.
 - d. The definition "Compliance agreement" is added.
 - e. The definition "Infested" is added.
 - f. The definition "Person" is added.
 - g. The definition "Pest" is added.
 - h. The definition "Pest host material" is added.
 - o. The definition "Restricted area" is corrected.
 - j. The definition "Soil" is added.
 - k. The definition "SPRO" is added.
 - l. The definition "State " is added.
4. Amending Section 4-72-3 Inspectional requirements. Adds "soil" to items required to be inspected by HDOA prior to being transported between the islands of the State, unless authorized by section 4-72-4(c). Clarifies that non-propagative plant parts may be inspected, at HDOA's discretion, when being transported between the islands of the State.
5. Amending Section 4-72-4 Prohibited transportations to:
 - a. Clarify that plants, propagative plant parts, and soil not inspected as required by section 4-72-3 may not be transported between islands of the State.

- b. Add that pest host material that is infested or infected with a pest or that is itself a pest may not be transported between or within islands of the State unless it has been treated as approved by the SPRO or the transportation is authorized by the SPRO.
 - c. Add subsection (c) that the inspectional requirements and prohibitions on transportation do not apply to HDOA moving items for research, testing, or educational purposes or to items moved pursuant to a permit approved by the SPRO and issued to an institution approved by the Board, a government agency, or a university for research, testing, or educational purposes.
6. Amending and renumbering Section 4-72-4.5 Designation of infested areas; expansion as section 4-72-10 (see below for proposed changes).
7. Adds new Section 4-72-5, Prohibition on movement of infested material to authorize the SPRO to:
 - a. Prohibit the movement of items that are for sale or otherwise available to the public that are infested or infected with a pest.
 - b. Require treatment of an area where the infested or infected items are stored.
 - c. Determine the disposition of the infested or infected items.
8. Amending and renumbering Section 4-72-8 Restrictions on transport, harboring, rearing, or breeding of pests as Section 4-72-6. Amendments allow the harboring, rearing, or breeding of a pest in the following instances:
 - a. For research, testing, or educational purposes by HDOA, or for a government agency, or a university at sites approved by the SPRO.
 - b. By an institution approved by the Board, pursuant to a permit approved by the SPRO.
9. Adds new Section 4-72-7, Permit and inspection fees to establish fees as follows:
 - a. The fee for a permit under chapter 4-72 is \$20 per permit for a single shipment within one year and \$100 per permit for unlimited shipments within one year.
 - b. The fee for a site inspection is \$25 per site inspected, plus mileage reimbursement.
10. Adds new Section 4-72-8, Inspection fees to set fees plus mileage reimbursement pursuant to Act 173, SLH 2010 for:
 - a. Inspections and other actions by HDOA carried out beyond regular work hours at \$50.00 per inspection, including applicable charges for overtime, fixed charges, and meals, as appropriate.
 - b. Inspections conducted away from a port or HDOA office at \$50.00 per hour.

11. Adds new Section 4-72-9, Economic loss or damage to clarify that the State is not responsible for economic loss or damages related to actions by HDOA in carrying out Chapter 4-72.
12. Amending and renumbering Section 4-72-4.5 Designation of infested areas; expansion as section 4-72-10 to:
 - a. Make technical amendments regarding press releases and written notices.
 - b. Delete “its plant or commodity hosts” and add “its pest host material”.
 - c. Remove the requirement that the Board’s action to expand an infested area occur on the island where a new infestation has occurred, following written notice to industry groups likely to be affected.
13. Adds new Section 4-72-11, Penalties to clarify that violations of Chapter 4-72 are subject to penalties pursuant to Chapters 150A-14 and 141-7, HRS.
14. Adds new Section 4-72-12, Scientific and common names to clarify that if a scientific or common name set out in Chapter 4-72 is changed to a new scientific or common name the reference in the chapter shall be construed to refer to the new name.
15. Adds new Section 4-72-13, Severability to clarify that if a provision of Chapter 4-72 is found to be unconstitutional or invalid, the other provisions of the chapter are not affected.
16. Amending and renumbering Section 4-72-5 Examples of regulated pests as Section 4-72-15. Amendments are proposed to make technical changes, including updating scientific and common names, and to add new examples of regulated pests.
17. Amending and renumbering Section 4-72-6 Restrictions on sugarcane as Section 4-72-16. Amendments are proposed to make technical changes and add that a university or government agency may conduct research on sugarcane, pursuant to a permit.
18. Amending and renumbering Section 4-72-7 Restrictions on soil, sand, and animal manure as Section 4-72-17. Amendments are proposed to make technical changes, delete “artificial” and add “soil-less”, and add that an institution approved by the Board, university, or government agency is eligible for a permit for diagnostic purposes.
19. Amending and renumbering Section 4-72-9 Restrictions on dasheen and taro as Section 4-72-18. Deletes “corms” from the heading and throughout the section.

20. Amending and renumbering Section 4-72-10 Restrictions on papaya and cucurbit as Section 4-72-19. Amendments make technical changes to scientific and common names.
21. Amending and renumbering Section 4-72-11 Restrictions on banana as Section 4-72-20. Amendments make technical changes for clarity.
22. Amending and renumbering Section 4-72-12 Restrictions on coffee as Section 4-72-21. Amendments make technical changes for clarity and allow coffee plants and plant parts for propagation to be quarantined at a facility approved by the SPRO.
23. Amending and renumbering Section 4-72-13 Quarantine restrictions on ohia and soil from rapid ohia death infested areas as Section 4-72-22. Amendments make technical changes, including updating scientific names.
24. Adds new Section 4-72-23, Quarantine restrictions on CRB and CRB host material to make permanent Plant Quarantine Interim Rule 22-1. The proposed Section:
 - a. Designates the entire island of Oahu as the CRB infested area.
 - b. Prohibits the movement of CRB host material within the State except by HDOA or pursuant to a compliance agreement issued by the SPRO.
 - c. Prohibits a person from transporting, receiving, processing, selling, bartering, donating, otherwise giving away, and exporting CRB host material within or from the infested area unless the person is operating under a compliance agreement or other permit issued by HDOA, or is directly exporting the material out of State.
25. Other changes are proposed throughout Chapter 4-72 for clarity, simplification, or to correct format, grammar, punctuation, and typeface.

III. Advisory Subcommittee Review:

This was sent to the Various Microorganism Advisory Subcommittees and the Advisory Subcommittee on Entomology for their comments and recommendations. Only the responsive members have been shown.

I recommend approval ___ / ___ disapproval to implement the proposed changes to Hawaii Administrative Rules, Chapter 4-72, entitled “Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules”, to among other things:

- A. Implement Plant Quarantine Interim Rule 22-1, regarding quarantine restrictions on the Coconut Rhinoceros Beetle (CRB) and CRB host materials;**
- B. Implement fees for inspections and the processing and issuance of permits;**
- C. Establish authority to prohibit the movement of infested materials within the state;**
- D. Include penalties for non-compliance; and**
- E. Make other changes for clarity or simplification and other non-substantive changes correcting grammar, punctuation, or typeface.**

Advisory Subcommittee on Entomology:

Dr. Peter Follett – recommends approval.

Comments: none

Dr. Daniel Rubinoff – recommends approval.

Comments: “I would only suggest that suppression activity continue for CRB on Oahu, or introduction to other islands will be inevitable.”

Dr. Mark Wright - recommends approval.

Comments: “The proposed changes address a number of important issues. Modifying the language to properly address CRB management is very timely. All other changes appear to be appropriate.”

Ms. Janis Matsunaga – recommends approval.

Comments: “I approve only under the conditions that further edits and changes be incorporated. I have included some edits to common and scientific names and authorities in the document through tracked changes. I am not clear on why some parentheses were deleted from the authorities’ names but I have added the necessary ones back in.

I am listing here some of the larger edits:

§4-72-2 Definitions

“Compliance agreement” means a written agreement between the department and a person who carries out commercial activities that includes any terms or conditions the SPRO

determines will slow or prevent the spread of a pest. A compliance agreement between the department and a person is a permit issued by the department to that person for the purposes of section 150A-8, HRS.

Question: Should this be limited to Chapter 150A? Should 141 also be included?

PQB NOTES: *This language is included to manage the requirements of 150A-8.*

"Pest host material" means any plant, propagative plant part, non-propagative plant part, soil, or any other thing that is found to be transporting or harboring a pest. It does not include fruit or vegetative scraps;

Question: Why are fruit and vegetative scraps not included? They can be pest host material as well.

PQB NOTES: *This can be removed.*

§4-72-3 Inspectional requirements.

(b) Cut or harvested flowers, foliage, fruits, vegetable, and other non-propagative plant parts need not be inspected prior to being transported between the islands of the State

Question: It was asked, what about cut hāpu'u logs (non-living) which may be infested with LFA or other pests?

PQB NOTES: *If infested action can be taken. As the rule stands, the requirement to inspect prior to movement is not included in this section.*

§4-72-5 Prohibition on movement of infested material. (a) The SPRO may prohibit the movement of any pest host material that is offered for sale, for barter, or by donation or otherwise to be given away to the public if the SPRO determines that the pest host material is infested or infected with a pest. The SPRO may compel treatment or destruction of the material per subsection (b). If such material was or is stored in an area that is infested or infected with a pest, then the SPRO may require appropriate

Question: Staff asked: Does this mean the SPRO has carte blanche powers? I.e. the pest is not listed anywhere? Say spotted lantern fly?

PQB NOTES: *This only applies to pests as approved by the Board. To enable carte blanche authority, the definition of pest would need to be expanded or additional language included after the term “pest” to cover these situations.*

- (1) Subjected to a treatment to eradicate the pest, as approved and supervised by the SPRO;

The term eradicate should be changed. Eradicate should be changed to eliminate or something of that nature

- (2) Destroyed using a method approved and supervised by the SPRO; or

- (3) If not treated or destroyed under paragraphs (1) or (2), then:

(A) Transported only pursuant to a permit issued by the SPRO; or

(B) Subject to any other disposition approved by the SPRO, including authorizing the transportation of untreated infested or infected pest host material or a pest to an island or location where the target pest is known to be established. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

Staff asked: Why do we need to include anything beyond “approved by the SPRO”. Does the SPRO have carte blanche ability to approve treatments?

PQB NOTES: *The intent is to have the flexibility to be able to deal with unusual circumstances. The SPRO does have that ability. .*

§4-72-6 Restrictions on transport, harboring, rearing, or breeding of pests. (a) The transport, harboring, rearing, or breeding of any pest is prohibited except:

Staff asked: How does harboring, in this context, relate, if at all, to nursery stock or other material that may move interisland? This would include compost held in an area....

PQB NOTES: Harboring deals with the intent to keep something, generally in secret. In the nursery context, harboring generally would not apply. Compost itself is not a pest, so would not be a violation under this particular section.

- (1) For research, testing, or educational purposes by the department;

Diagnostic work should be included

PQB NOTES: This can be included.

- (2) Pursuant to a permit approved by the SPRO and issued to an institution approved by the board; or
- (3) By a government agency, or a university for research, testing, or educational purposes at a site inspected and approved by the SPRO prior to movement. [Eff 7/13/81; comp 9/19/91; am and comp 2/24/12; am and ren §4-72-6; and comp] (Auth: HRS §§141-2, 150A-9, 150A-53) (Imp: HRS §§141-2, 150A-8, 150A-53)

Diagnostic work should be included

PQB NOTES: This can be included.

§4-72-7 User permit and site inspection fees. (a) A fee for the processing of an application and issuance of a permit under this chapter is as follows:

- (1) \$20 per permit for a single shipment within one year from the date of issuance;
- (2) \$100 per permit for unlimited shipments within one year from the date of issuance; and
- (3) All applicable fees shall be paid in full at the time of request and are non-refundable except as approved by the SPRO.

(b) In addition to the requirements of subsection (a), a fee for a site inspection as required by this chapter or by permit conditions shall be \$25 per site inspection, plus mileage

reimbursement. [Eff and comp] (Auth: HRS §§141-2, 150A-7.5, 150A-7.6, 150A-9) (Imp: HRS §§141-2, 150A-9)

Staff asked: Is a 40-yard container of compost site inspection the same as 1 plant? When is a permit needed? Is a permit needed if someone wants to take an orchid in a pot interisland? Can they expect to have a permit in real time if they are unaware?

PQB NOTES: *In this instance a site inspection fee would only occur if the permit required it. The fee for the inspection required for movement would be covered in section 4-72-8. If done off-site, the fees would be the same. The intent of the fees is to incentivize shippers to bring plants to us as opposed to PQB going to them.*

§4-72-8 Inspection fees. (a) Fees for inspections pursuant to this chapter are as follows:

What is the difference between a site inspection fee and an inspection fee? It may be beneficial to define “site inspection”.

PQB NOTES: *Additional language can be added for clarity. Generally, inspections are done prior to movement, whereas a site inspection is done as a prerequisite to the issuance of a permit or compliance agreement.*

§4-72-15: Examples of taxa which should be deleted due widespread current distribution:

[Please review other eids in tracked changes]

- (1) Oriental beetle- [CORRECT NAME] *Anomala orientalis* (Waterhouse)
- (2) Fern weevil- *Syagrius fulvitarisis* Pascoe
This is on all major islands except Moloka'i. Should this remain on this list?
- (3) Giant African snail- [CORRECT NAME] *Lissachatina fulica* (Bowdich)
This should be deleted as it is found on all major islands
- (4) Cactus mealybug- [CORRECT NAME] *Dactylopius opuntiae* (Cockerell)
This should be deleted. This is a purposefully released biological control and is a beneficial organism
- (5) Hunting billbug- *Sphenophorus venatus vestitus* Chittenden
This is found on all islands except Lāna'i. Should it remain on this list?

(9) Orange spiny whitefly- [CORRECT NAME] *Aleurocanthus spiniferus* (Quaintance)

(10) Bristly rose slug- [CORRECT NAME] *Cladius difformis* (Panzar)

This should be deleted. It was collected just one time in the 1970s in Volcano, Hawai'i and has been assumed as not established

(11) Croton whitefly- [CORRECT NAME] *Orchamoplatus mammaeferus* (Quaintance and Baker)

This is found on all major islands except Moloka'i. Keep on?

(12) Anthurium whitefly- [CORRECT NAME] *Aleurotulus anthuricola* Nakahara

(13) An anthurium whitefly- [CORRECT NAME] *Crenidorsum aroidephagus* Martin & Aguiar

(14) Euarsian pine aphid- [CORRECT NAME] *Pineus pini* (Macquart)

This is found on all islands except Lāna'i. I suggest deleting it as it is only a pine

(15) Fiery skipper- [CORRECT NAME] *Hylephila phyleus* (Drury)

I don't think this is as much of a concern as before, but can keep on?

(16) Taro root aphid- [CORRECT NAME] *Pemphigus populitransversus* Riley

(17) Eucalyptus canker- [CORRECT NAME] *Chrysosporthe cubensis* (Bruner) Gryzenh. & M.J. Wingf.

(21) Fusarium wilt of banana- [CORRECT NAME] *Fusarium oxysporum* f. sp. *cubense* W.C. Snyder & H.N. Hansen

(22) Citrus huanglongbing- [CORRECT NAME] *Candidatus Liberibacter asiaticus* Jagoueix, Bové & Garnier

(23) Lethal yellowing of palms- [CORRECT NAME] *Candidatus Phytoplasma palmae* (16SrIV-A subgroup)

I suggest the following additions of invasive plant pest arthropods with limited distribution. However, I am unclear on "regulated" status. Are the currently listed species in another chapter as well under "regulated pests"?

(1) Hala scale- *Thysanococcus pandani* Stickney, a serious pest of hala, an environmentally and culturally significant indigenous plant

(2) Macadamia felted coccid- *Acanthococcus ironsidei* (Williams, 1973), a detrimental pest to the macadamia nut industry in Hawaii

(3) *Acalolepta aesthetica* (Olliff) an invasive longhorn beetle that attacks many plant species

PQB NOTES: *This section exists to list specific pests designated by the Board. Some may be in other sections of the rules or statutes and those particular requirements are in effect including those found in 4-72.*

§4-72-~~11~~20 Restrictions on banana. (a)

Transportation of banana plants and plant parts except fruits is prohibited from the island of Oahu and from the North Kona and South Kona Districts on the island of Hawaii, which are banana bunchy top virus infested areas, to other islands and localities within the State except by permit pursuant to subsection (b).

(b) A permit to allow transportation of banana plants and plant parts from an infested area may be issued by the ~~chief~~SPRO subject to permit conditions established by the board to prevent the movement of banana bunchy top virus from banana bunchy top virus infested areas. The ~~chief~~SPRO may, without submitting a permit application to the board, approve the issuance of a permit with conditions previously mandated by the board upon the ~~chief~~SPRO's determination that, for the proposed transport, the previously established conditions are adequate to preserve the quarantine. [Eff 7/13/81; comp 9/19/91; am 4/13/98; am and comp 2/24/12; ren §4-72-20; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

Given the impact of Fusarium TR 4 would have, it is suggested Plant Quarantine be proactive and restrict the movement of propagative plants. Otherwise, TR4 will spread by the time an interim rule is placed.

PQB NOTES: *PQB will work with Ms. Matsunaga to address how she would envision the restriction to look like.*

§4-72-~~21~~2 Restrictions on coffee.

(a) Transportation of coffee plants and parts thereof, including unroasted seeds (green coffee beans), used coffee bags, and coffee harvesting equipment, including baskets, sacks,

or containers, is prohibited from a coffee berry borer infested area to a coffee berry borer restricted area except by permit pursuant to subsection (b).

(b) A permit may be issued by the [chief]SPRO for the transportation of a commodity or item listed in subsection (a), with conditions established by the [chief]SPRO appropriate for each of the following circumstances:

- (1) Coffee plants and plant parts for propagation when subject to treatment with an approved pesticide, and grown and monitored in quarantine for a period of not less than one year at a [s]State facility or other facility approved by the SPRO;
- (2) Coffee plants and plant parts that have been shipped using safeguards approved by the [chief]SPRO to an approved facility for research purposes;
- (3) Roasting of green coffee beans that have been subjected to treatments approved by the [chief]SPRO;
- (4) Roasting of untreated green coffee beans that have been shipped using safeguards approved by the [chief]SPRO to an approved facility that is located at least 5 miles away from a commercial coffee growing area;
- (5) Used coffee bags that have been subjected to treatments approved by the [chief]SPRO; or
- (6) Coffee harvesting equipment that has been subjected to treatments approved by the [chief]SPRO.

(c) The [chief]SPRO is authorized to approve treatments and mitigative measures as they are scientifically validated and may revise permit conditions accordingly, as necessary to prevent movement of the coffee berry borer from the infested area and to preserve the quarantine. Organic treatment methods are available, as approved by the [chief]SPRO.

(d) Coffee plants, plant parts, green coffee beans, and used coffee bags for export are not subject to quarantine restrictions, provided that they are exported directly from the coffee berry borer infested area and are not transshipped through a coffee berry borer restricted area in the State. Coffee plants, plant parts, green coffee beans, and used coffee bags for export that move from one infested area to another or that are exported via transshipment through a coffee berry borer restricted area must be double-bagged in thick, transparent, non-permeable plastic bags that are sealed and labeled to identify their contents as being from a specific coffee berry borer infested area, provided that the [chief]SPRO is authorized to revise these required safeguards, as necessary.

(e) The island of Hawaii is designated as a coffee berry borer infested area, notwithstanding ongoing control projects on the island, and other islands in the State are designated as coffee berry borer restricted areas. The designated coffee berry borer infested area may be expanded by board action as provided in ~~[§4-72-4.5.]~~section 10. [Eff and comp 2/24/12; am and ren §4-72-21; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

Coffee berry borer and coffee leaf rust are now found on all islands/statewide, therefore, should these restrictions not be deleted?"

PQB NOTES: *PQB's policy has been to maintain regulations until industry/stakeholders deems the regulation unnecessary. This is done to ensure that there is no perception of lessening regulations which could benefit some stakeholders and not others.*

Microbial Subcommittee members:

Dr. A. Christian Whelen – recommends approval.

Comments: "I only saw one reference to a bacterium (*Fusarium* sp.), but the status of valid (and invalid) taxonomic names can be checked at LPSN - List of Prokaryotic names with Standing in Nomenclature, which you may want to add to this section: §4-72-12 Scientific and common names."

ADVISORY COMMITTEE REVIEW: May we request your recommendation and comments at the next meeting of the Advisory Committee on Plants and Animals.

Amendment and Compilation of Chapter 4-72
Hawaii Administrative Rules

Date (month day, year)

1. Chapter 4-72, Hawaii Administrative Rules entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules, Chapter 72, Hawaii Administrative Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 4 DEPARTMENT OF AGRICULTURE

SUBTITLE 6 DIVISION OF PLANT INDUSTRY

CHAPTER 72

PLANT AND NON-DOMESTIC ANIMAL QUARANTINE

PLANT AND PEST HOST MATERIAL INTRASTATE RULES

Subchapter 1 General Provisions

- §4-72-1 Objective
- §4-72-2 Definitions
- §4-72-3 Inspectional requirements
- §4-72-4 Prohibited transportations
- ~~§4-72-4.5 Designation of infested areas; expansion]~~
- §4-72-5 Prohibition on movement of infested material
- §4-72-6 Restrictions on transport, harboring, rearing, or breeding of pests
- §4-72-7 User permit and site inspection fees
- §4-72-8 Inspection fees
- §4-72-9 Economic loss or damages

<u>§4-72-10</u>	<u>Designation of infested areas; expansion</u>
<u>§4-72-11</u>	<u>Penalties</u>
<u>§4-72-12</u>	<u>Scientific and common names</u>
<u>§4-72-13</u>	<u>Severability</u>
<u>§4-72-14</u>	<u>(Reserved)</u>

Subchapter 2 Intrastate Restrictions

<u>§4-72-15</u>	Examples of regulated pests
<u>§4-72-16</u>	Restrictions on sugar[-]cane
<u>§4-72-17</u>	Restrictions on soil, sand, and animal manure
[§4-72-8]	Restrictions on transport, harboring, rearing, or breeding of pests]
<u>§4-72-18</u>	Restrictions on dasheen and taro[-corns]
<u>§4-72-19</u>	Restrictions on papaya and cucurbit
<u>§4-72-20</u>	Restrictions on banana
<u>§4-72-21</u>	Restrictions on coffee
<u>§4-72-22</u>	Quarantine restrictions on ohia and soil from rapid ohia death infested areas
<u>§4-72-23</u>	<u>Quarantine restrictions on coconut rhinoceros beetle and host material</u>

Historical note: Chapter 72 of Title 4 is based substantially upon Regulation 4 [E]entitled "Concerning Transportation of Plant or Parts of Same, Plant Materials and Plant Products Between the Hawaiian Islands," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff 12/12/41 as Reg 14; ren Reg 4 8/30/47; R 7/13/81]; Regulation 4.1 [E]entitled "Concerning Transportation of Plants or Parts of Same, Plant Materials or Plant Products from Oahu to Other Islands of the Hawaiian Group," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff 12/12/41 as §2 of Reg 14; ren Re 4.1 8/30/47; R 7/13/81]; Regulation 4.2 [E]entitled "Concerning the Transportation of Soil, Earth or Sand from the Islands of Oahu, Hawaii, Lanai and Kauai to Other Islands of the Hawaiian Group," of the Division of Entomology, Board of Commissioners of Agriculture

and Forestry [Eff 12/12/41 as §§4 and 5 of Reg 14; ren Reg 4.2 8/30/47; R 7/13/81]; Regulation 4.3 [E]entitled "Concerning the Movement of Fern Plants or Parts Thereof Between the Islands of the Hawaiian Group," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff 12/12/41 as Reg 15; ren Reg 4.3 8/30/47; R 7/13/81]; Regulation 4.4 [E]entitled "Concerning the Giant African Snail (*Achatina Fulica* Bowdich)," of the Division of Plant Industry, Department of Agriculture [Eff 7/1/42 as Reg 18; ren Reg 4.4 8/30/47; am 5/26/64; R 7/13/81]; and Regulation 4.7 [E]entitled "Concerning the Transportation of Cactus or Cactaceous Plants or Parts Thereof from the Island of Hawaii to Other Islands of the Hawaiian Group," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry. [Eff 7/13/81; comp 9/19/91; am 4/13/1998; comp 2/24/12]. (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§ 141-2, 150A-8)

SUBCHAPTER 1

GENERAL PROVISIONS

§4-72-1 Objective. The objective of this chapter is to implement the requirements of chapters 141 and 150A, Hawaii Revised Statutes, by restricting or prohibiting the interisland and intrainisland transportation of plant pests and ~~[their plant or commodity hosts]~~ infested or infected pest host material to prevent the spread and establishment of plant pests detrimental to agriculture, horticultural industries and forest lands on uninfested islands and in uninfested localities of the State. [Eff 7/13/81; comp 9/19/91; am 4/13/1998; comp 2/24/12; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-2 Definitions. As used in this chapter:

"Advisory Committee" means the advisory committee on plants and animals;

"Animal manure" means manure from poultry or livestock;

"Board" means the board of agriculture;

~~["Department" means department of agriculture;]~~

~~["Chief" means chief of the plant quarantine branch;]~~

"Compliance agreement" means a written agreement between the department and a person who carries out commercial activities that includes any terms or conditions the SPRO determines will slow or prevent the spread of a pest. A compliance agreement between the department and a person is a permit issued by the department to that person for the purposes of section 150A-8, HRS.

"Department" means the department of agriculture;

"Infested" means harboring a pest;

"Infested area" means an island or locality within the State where a specific pest is known to be established; ~~[and]~~

"Person" means any individual, firm, corporation, association, partnership, or other entity, including a governmental or not-for-profit entity;

"Pest" means any animal, insect, disease agent or other organism in any stage of development that is detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or natural resources including native biota or has an adverse effect on the environment as determined by the board;

"Pest host material" means any plant, propagative plant part, non-propagative plant part, soil, or any other thing that is found to be transporting or harboring a pest. It does not include fruit or vegetative scraps;

"Restricted area" means an island or locality within the State where a specific pest is not known to be established or where an eradication or control project for a specified pest is being conducted by the ~~[plant pest control branch.]~~department;

"Soil" means that part of the upper layer of earth in which plants can grow; this material may or may not contain organic matter and includes such planting media as deteriorated peat;

"SPRO" means the State Plant Regulatory Official for Hawaii or a designee of the SPRO; and

"State" means the State of Hawaii. [Eff 7/13/81; comp 9/19/91; am and comp 2/24/12; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-3 Inspectional requirements. (a) [~~Plant and~~] Except as provided in section 4-72-4(c), plants, propagative plant parts, and soil shall be inspected prior to being transported between the islands of the State. A certificate of inspection shall indicate satisfaction of the requirement for inspection.

(b) Cut or harvested flowers, foliage, fruits, vegetable, and other non-propagative plant parts need not be inspected prior to being transported between the islands of the State; provided that these commodities [~~shall~~] do not have additional requirements found within this chapter, and may be subject to [~~periodic random~~] inspection at either the port of departure or port of entry[~~-~~], at the discretion of the department. [Eff 7/13/81; comp 9/19/91; am and comp 2/24/12; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-4 Prohibited transportations. (a) [~~The~~] Except as provided in subsection (c), the interisland transportation of [~~a commodity~~] plants, propagative plant parts, or soil that is not inspected pursuant to [~~§4-72-3~~] section 3, is prohibited.

(b) [~~A commodity~~] Pest host material that is infested or infected with a[~~ny~~] pest or that is itself a pest[~~defined in §150A-2, Hawaii Revised Statutes,~~]

shall not be transported between the islands or from one part or locality of any island to another part or locality of the same island unless it has been subjected to an appropriate treatment [~~that exterminates the pest~~], as approved by the [chief]SPRO. Appropriate treatment may include, but is not limited to, pesticide or fumigation treatment. The [chief]SPRO may, however, authorize the transportation of an untreated infested [~~commodity~~] or infected pest host material to an island or location where the pest is known to be established.

~~[(c) Specific commodities shall not be transported pursuant to their respective restrictions in §§ 4-72-6, 4-72-7, 4-72-8, 4-72-9, 4-72-10, 4-72-11, and 4-72-12.]~~

(c) Notwithstanding subsections (a) and (b) and section 3, plants, plant parts, soil, or pest host material infested or infected with a pest may be transported without inspection between islands or between parts or localities of the same island:

(1) For research, testing, or educational purposes by the department; or

(2) Pursuant to a permit approved by the SPRO and issued to an institution approved by the board, a government agency, or a university for research, testing, or educational purposes at a site inspected and approved by the SPRO prior to movement. [Eff 7/13/81; am and comp 9/19/91; am and comp 2/24/12; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

~~**[§4-72-4.5 Designation of infested areas; expansion.** (a) The area of infestation as designated by rule, including interim rule, may be expanded by the board to reflect the spread of a specific pest infestation in order to implement quarantine measures to prevent movement of the pest and its plant or commodity hosts from the expanded area of infestation to restricted areas, provided that:~~

- ~~(1) The board first obtains advice from qualified persons with relevant expertise, but need not obtain advisory committee review;~~
- ~~(2) The board designates the expanded infested area, identifying the revised geographical extent of the infestation;~~
- ~~(3) The board's action occurs at a meeting on the island where the new infestation has occurred, following written notice of the proposed board designation to industry groups likely to be affected;~~
- ~~(4) The department issues a press release and written notice of the designation of expansion of the infested area to affected industry groups prior to the effective date of designation of expanded infested area; and~~
- ~~(5) Notice of the board's action, including its effective date, is posted by the following day on the department's website and is given in a daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide within twelve days of the board's action.~~

~~(b) The board's designation of an expanded infested area shall be effective the day following the board's action, unless a later effective date is specified by the board's action. [Eff and comp 2/24/12] (Auth: HRS §§141-2, 150A-9, 150A-9.5) (Imp: HRS §§141-2, 150A-8)]~~

§4-72-5 Prohibition on movement of infested material. (a) The SPRO may prohibit the movement of any pest host material that is offered for sale, for barter, or by donation or otherwise to be given away to the public if the SPRO determines that the pest host material is infested or infected with a pest. The SPRO may compel treatment or destruction of the material per subsection (b). If such material was or is stored in an area that is infested or infected with a pest, then the SPRO may require appropriate

treatment of the area prior to authorizing the movement of the material.

(b) An item subject to the prohibition in subsection (a) shall be:

- (1) Subjected to a treatment to eradicate the pest, as approved and supervised by the SPRO;
- (2) Destroyed using a method approved and supervised by the SPRO; or
- (3) If not treated or destroyed under paragraphs (1) or (2), then:
 - (A) Transported only pursuant to a permit issued by the SPRO; or
 - (B) Subject to any other disposition approved by the SPRO, including authorizing the transportation of untreated infested or infected pest host material or a pest to an island or location where the target pest is known to be established. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-6 Restrictions on transport, harboring, rearing, or breeding of pests. (a) The transport, harboring, rearing, or breeding of any pest is prohibited except:

- (1) For research, testing, or educational purposes by the department;
- (2) Pursuant to a permit approved by the SPRO and issued to an institution approved by the board; or
- (3) By a government agency, or a university for research, testing, or educational purposes at a site inspected and approved by the SPRO prior to movement. [Eff 7/13/81; comp 9/19/91; am and comp 2/24/12; am and ren §4-72-6; and comp] (Auth: HRS §§141-2, 150A-9, 150A-53) (Imp: HRS §§141-2, 150A-8, 150A-53)

§4-72-7 User permit and site inspection fees.

(a) A fee for the processing of an application and issuance of a permit under this chapter is as follows:

- (1) \$20 per permit for a single shipment within one year from the date of issuance;
- (2) \$100 per permit for unlimited shipments within one year from the date of issuance; and
- (3) All applicable fees shall be paid in full at the time of request and are non-refundable except as approved by the SPRO.

(b) In addition to the requirements of subsection (a), a fee for a site inspection as required by this chapter or by permit conditions shall be \$25 per site inspection, plus mileage reimbursement. [Eff and comp] (Auth: HRS §§141-2, 150A-7.5, 150A-7.6, 150A-9) (Imp: HRS §§141-2, 150A-9)

§4-72-8 Inspection fees. (a) Fees for inspections pursuant to this chapter are as follows:

- (1) A fee of \$50 for any inspection, safeguarding, witnessing treatment, or certification requiring the services of personnel beyond regular work hours, including applicable charges for overtime wages, fixed charges for personnel services, and meals as appropriate;
- (2) A fee of \$50 per hour for any inspection conducted away from the port or department office during regular work hours pursuant to requirements for certification, interisland or intraisland movement, or disposition other than release at a port of arrival, such as witnessing departure, destruction, or treatment.

(b) In addition to any fee required by subsection (a), all inspections shall include mileage reimbursement.

(c) The person receiving the inspection shall be responsible for all costs, charges, treatment, destruction, or expenses incident to the inspection of the material, as appropriate. [Eff and comp] (Auth: HRS §§141-2, 150A-7.5, 150A-9) (Imp: HRS §§141-2, 150A-9)

§4-72-9 Economic loss or damages. The State shall not be responsible for any economic loss or damages related to any actions by the department pursuant to this chapter. Actions include treatment, quarantine, or destruction of any item. [Eff and comp] (Auth: HRS §§141-2, 141-3, 141-5, 150A-9) (Imp: HRS §§141-2, 141-3, 141-5, 150A-8)

§4-72-10 Designation of infested areas; expansion. (a) If the infested area of a pest is designated by rule, including interim rule, that area may be expanded by an order of the board to reflect the spread of a specific pest infestation in order to implement quarantine measures to prevent movement of the pest and its pest host material from the infested area to restricted areas, provided that:

- (1) The board first obtains advice from qualified persons with relevant expertise, but need not obtain advisory committee review;
- (2) The board designates the expanded infested area, identifying the revised geographical extent of the infestation;
- (3) The department issues a press release describing the expansion of the infested area prior to the effective date of designation of the expanded infested area; and

(4) Notice of the board's action, including its effective date, is posted by the following day on the department's website and is given in a daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide, within twelve days of the board's action.

(b) The board's designation of an expanded infested area shall be effective the day following the board's action, unless a later effective date is specified by the board's action. [Eff and comp 2/24/12; am and ren §4-72-10; and comp] (Auth: HRS §§141-2, 150A-9, 150A-9.5) (Imp: HRS §§141-2, 150A-8)

§4-72-11 Penalties. Any person who violates any provision or requirement of this chapter or of any notice given pursuant thereto, shall be subject to the penalties provided for under section 150A-14, HRS, or section 141-7, HRS, if appropriate. [Eff and comp] (Auth: HRS §§141-7, 150A-9, 150A-14) (Imp: HRS §§141-7, 150A-14)

§4-72-12 Scientific and common names. If the scientific name or common name of a taxon referred to in this chapter is changed to a new scientific name or common name accepted by the International Code of Zoological Nomenclature (ICZN) or the International Plant Names Index (IPNI) the reference in this chapter shall be construed to refer to the new scientific name or common name, as appropriate. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-9)

§4-72-13 Severability. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality and validity of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-9)

§4-72-14 Reserved.

SUBCHAPTER 2

INTRASTATE RESTRICTIONS

§4-72-15 Examples of regulated pests. Examples of ~~[pests for the purposes of §4-72-4 shall]~~ taxa that are pests include, but are not ~~[be]~~ limited to the following:

- (1) Oriental beetle - ~~[Anomala orientalis]~~ Anomala orientalis Waterhouse, a serious insect pest of sugarcane;
- (2) Fern weevil - ~~[Syagrus fulvitarisis]~~ Syagrus fulvitarisis Pascoe, an insect pest injurious to fern plants;
- (3) Giant African snail - ~~[Achatina fulica]~~ Achatina fulica Bowdich, a serious pest of horticultural and vegetable crops;
- (4) Cactus mealybug - ~~[Dactylopius opuntiae]~~ Dactylopius opuntiae ~~[+]Cockerell[+]~~ and other insects feeding on ~~[opuntia spp. Of]~~ Opuntia species of cactus, pests injurious to cactus utilized for forage or ornamental purposes;
- (5) Hunting billbug - ~~[Sphenophorus venatus vestitus]~~ Sphenophorus venatus vestitus Chittenden, a serious insect pest of turf and range grasses;

- (6) Coconut scale - [~~Aspidiotus destructor~~] Aspidiotus destructor Signoret, a serious insect pest of palms, bananas, and more than 400 more plants;
- (7) Sugarcane smut - [~~Ustilago Seitaminea~~] Ustilago scitaminea Syd., a serious fungus disease of sugarcane;
- (8) Papaya [~~mosaic~~] ringspot virus, a serious virus disease of papaya;
- (9) Orange spiny whitefly - [~~Aleurocanthus spiniferus~~] Aleurocanthus spiniferus [†]Quaintance[†], a serious insect pest of rose and citrus;
- (10) Bristly rose slug - [~~Cladius differmis~~] Cladius differmis Panzar, a pest injurious to the rose plant;
- (11) Croton whitefly - [~~Orchamplatus mammaeferus~~] Orchamplatus mammaeferus [†]Quaintance and Baker[†], a serious insect pest of croton and citrus;
- (12) Anthurium whitefly - [~~Aleurotulus~~] Aleurotulus sp., a serious insect pest of anthurium;
- (13) An anthurium whitefly - [~~Crenidorsum~~] Crenidorsum sp., a serious insect pest of anthurium, philodendron, and monstera;
- (14) Eurasian pine aphid - [~~Pineus pini~~] Pineus pini Koch, a serious insect pest of pine;
- (15) Fiery skipper - [~~Hylephila phyleus~~] Hylephila phyleus Drury, a serious pest of turf and pasture grasses and ornamental sedges;
- (16) Taro root aphid - [~~Pemphigus~~] Pemphigus sp., a serious pest of dryland taro; [and]
- (17) Eucalyptus canker - [~~Cryphonectria cubensis~~] Cryphonectria cubensis [†]Bruner[†] Hodges, a serious disease of [~~Eucalyptus~~] Eucalyptus [spp.] species;
- (18) Giant salvinia - *Salvinia molesta* Mitchell;
- (19) Water spangles - *Salvinia minima* Baker;
- (20) Water lettuce - *Pistia stratiotes* L.;

- (21) Fusarium wilt of banana - *Fusarium* spp.;
- (22) Citrus huanglongbing - *Candidatus Liberibacter* spp., responsible for citrus greening;
- (23) Palm lethal yellows - *Candidatus Phytoplasma* spp., responsible for lethal diseases of palm;
- (24) Colocasia bobone disease associated virus - *Cytorhabdovirus colocasiae*, a lethal pathogen associated with alomae bobone disease of taro;
- (25) Sweet potato virus disease - *Sweet potato chlorotic stunt virus*, a lethal disease of sweet potato; and
- (26) Any taxa designated as a pest for control or eradication pursuant to chapter 4-69A, including any taxa designated as a noxious weed pursuant to chapter 4-68. [Eff 7/13/81; am and comp 9/19/91; comp 2/24/12; am and ren §4-72-15; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-16 Restrictions on sugarcane. (a)

Transportation of sugarcane plants and parts thereof including leaves, roots, and cuttings which are hosts of the oriental beetle and sugarcane smut disease shall be prohibited from an infested area to a restricted area for the oriental beetle and sugarcane smut disease except by permit pursuant to subsection (b).

(b) A permit may be issued by the [~~chief~~] SPRO to the [~~Hawaiian Sugar Planters' Association (HSPA)] Hawaii Agricultural Research Center (HARC) and to persons conducting research under the auspices of the [~~HSPA~~] HARC or a university or government agency for the transportation of a limited quantity of sugarcane plants and parts from an infested area to a restricted area for the oriental beetle or sugarcane smut disease. [Eff~~

7/13/81; comp 9/19/91; comp 2/24/12; am and ren §4-72-16; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

- §4-72-17 Restrictions on soil, sand, and animal manure.** (a) Transportation of the following is prohibited from an infested island to a restricted island for the oriental beetle~~[.]~~:
- (1) Soil, sand contaminated with visible amounts of soil, and animal manure in bulk shipment or in individual containers except by permit issued pursuant to subsection (b); and
 - (2) A plant in soil, sand, or ~~[artificial]~~soil-less planting media except~~[.]~~:
 - (A) A plant from a certified nursery;
 - (B) A plant from a commercial nursery located 1/4 mile or further from a field planted in sugarcane;
 - (C) A plant that has been verified by an inspector as grown in a locality 1/4 mile or further from a field planted in sugarcane;
 - (D) A plant that has been treated with an appropriate soil pesticide;
 - (E) A plant that has been bare-rooted; or
 - (F) ~~[Orchid p]~~Plants in cinders, hapuu or other artificial planting media.
- (b) Permits required pursuant to subsection (a)(1) shall be issued by the ~~[chief]~~SPRO under ~~[either one of]~~ the following circumstances:
- (1) Fresh or composted animal manure that has not supported any plant growth from an area located 1/4 mile or further from any field planted in sugarcane; ~~[or]~~
 - (2) Animal manure, soil, and sand contaminated with soil that has been fumigated, ~~[or]~~ treated with an appropriate pesticide~~[.]~~, or subjected to a treatment, as approved and witnessed by the SPRO; or

- (3) For diagnostic purpose by an institution approved by the board, a university, or government agency. [Eff 7/13/81; comp 9/19/91; comp 2/24/12; am and ren §4-72-17; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

~~§4-72-8 Restrictions on transport, harboring, rearing, or breeding of pests.~~ (a) ~~The transport, harboring, rearing, or breeding of any pest defined in §150A-2, Hawaii Revised Statutes is prohibited except under safeguards in an area infested by the pest involved for research, testing, or educational purposes by:~~

- ~~(1) The plant pest control branch;~~
- ~~(2) An agency, school, or university via permit issued by the chief. [Eff 7/13/81, comp 9/19/91, am and comp 2/24/12] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)]~~

§4-72-[9]18 Restrictions on dasheen and taro [corms]. Transportation of dasheen and taro [corms] are prohibited from an infested island to a restricted island for taro root aphid except:

- (1) Taro [corms] consigned to a poi factory or other food processing plant;
- (2) Dasheen and taro [corms] consigned to produce wholesalers, supermarkets, retail food stores, and restaurants;
- (3) Taro [corms] verified as wetland taro; and
- (4) Taro consigned to individuals for food preparation with the corm's "huli" removed. [Eff 7/13/81; comp 9/19/91; comp 2/24/12; am and ren §4-72-18 and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

4-72-1[0]9 Restrictions on papaya and cucurbit.

Transportation of papaya *Carica papaya* and cucurbit (plants in the family [~~eucurbitaceae~~] Cucurbitaceae) plants and plant parts except seed and fruit are prohibited from an infested area to a restricted area for papaya [~~mosaic~~]ringspot virus disease. [Eff 7/13/81; comp 9/19/91; comp 2/24/12; am and ren §4-72-19; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-[11]20 Restrictions on banana. (a)

Transportation of banana plants and plant parts except fruits is prohibited from the island of Oahu and from the North Kona and South Kona Districts on the island of Hawaii, which are banana bunchy top virus infested areas, to other islands and localities within the State except by permit pursuant to subsection (b).

(b) A permit to allow transportation of banana plants and plant parts from an infested area may be issued by the [~~chief~~]SPRO subject to permit conditions established by the board to prevent the movement of banana bunchy top virus from banana bunchy top virus infested areas. The [~~chief~~]SPRO may, without submitting a permit application to the board, approve the issuance of a permit with conditions previously mandated by the board upon the [~~chief~~]SPRO's determination that, for the proposed transport, the previously established conditions are adequate to preserve the quarantine. [Eff 7/13/81; comp 9/19/91; am 4/13/98; am and comp 2/24/12; ren §4-72-20; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-21[2] Restrictions on coffee. (a)

Transportation of coffee plants and parts thereof, including unroasted seeds (green coffee beans), used coffee bags, and coffee harvesting equipment,

including baskets, sacks, or containers, is prohibited from a coffee berry borer infested area to a coffee berry borer restricted area except by permit pursuant to subsection (b).

(b) A permit may be issued by the [chief]SPRO for the transportation of a commodity or item listed in subsection (a), with conditions established by the [chief]SPRO appropriate for each of the following circumstances:

- (1) Coffee plants and plant parts for propagation when subject to treatment with an approved pesticide, and grown and monitored in quarantine for a period of not less than one year at a [s]State facility or other facility approved by the SPRO;
- (2) Coffee plants and plant parts that have been shipped using safeguards approved by the [chief]SPRO to an approved facility for research purposes;
- (3) Roasting of green coffee beans that have been subjected to treatments approved by the [chief]SPRO;
- (4) Roasting of untreated green coffee beans that have been shipped using safeguards approved by the [chief]SPRO to an approved facility that is located at least 5 miles away from a commercial coffee growing area;
- (5) Used coffee bags that have been subjected to treatments approved by the [chief]SPRO; or
- (6) Coffee harvesting equipment that has been subjected to treatments approved by the [chief]SPRO.

(c) The [chief]SPRO is authorized to approve treatments and mitigative measures as they are scientifically validated and may revise permit conditions accordingly, as necessary to prevent movement of the coffee berry borer from the infested area and to preserve the quarantine. Organic treatment methods are available, as approved by the [chief]SPRO.

(d) Coffee plants, plant parts, green coffee beans, and used coffee bags for export are not subject to quarantine restrictions, provided that they are

exported directly from the coffee berry borer infested area and are not transshipped through a coffee berry borer restricted area in the State. Coffee plants, plant parts, green coffee beans, and used coffee bags for export that move from one infested area to another or that are exported via transshipment through a coffee berry borer restricted area must be double-bagged in thick, transparent, non-permeable plastic bags that are sealed and labeled to identify their contents as being from a specific coffee berry borer infested area, provided that the [chief]SPRO is authorized to revise these required safeguards, as necessary.

(e) The island of Hawaii is designated as a coffee berry borer infested area, notwithstanding ongoing control projects on the island, and other islands in the State are designated as coffee berry borer restricted areas. The designated coffee berry borer infested area may be expanded by board action as provided in [~~§4-72-4.5.~~]section 10. [Eff and comp 2/24/12; am and ren §4-72-21; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-[13]22 Quarantine restrictions on ohia and soil from rapid ohia death infested areas. (a) The board has determined that the disease called ohia wilt (also known as rapid ohia death) presents a serious danger to ohia (*Metrosideros*), the ohia forests of Hawaii, and horticultural and agricultural industries.

(b) Transportation of soil and ohia (*Metrosideros*, all species in genus) plants, plant parts, including flowers, leaves, seeds, stems, twigs, cuttings, mulch, greenwaste, frass, wood, logs, and posts is prohibited from a rapid ohia death infested area to a rapid ohia death restricted area except as allowed by permit pursuant to subsection (c), or as otherwise provided herein.

(c) A permit may be issued by the [chief]SPRO for the transportation of a material or commodity

listed in subsection (b), subject to laboratory analysis or other science-based method approved by the [chief]SPRO, as appropriate, to determine whether the material or commodity is free of [~~the fungus, *Ceratocystis fimbriata*,~~]the causal agents of ohia wilt disease, *Ceratocystis lukuohia* and *C. huliohia*, and subject to appropriate conditions established by the [chief]SPRO.

(d) Material or a commodity listed in subsection (b) that tests positive for *Ceratocystis* [~~*fimbriata*~~] *lukuohia* or *C. huliohia*, other than material or a commodity for research or diagnostic purposes, shall not be shipped from a rapid ohia death infested area to a rapid ohia death restricted area, nor shall any material or commodity in the same lot for shipment be shipped, unless an effective treatment to destroy *Ceratocystis* [~~*fimbriata*~~] *lukuohia* and *C. huliohia* is available, is approved by the [chief]SPRO, and the shipment has been subjected to the approved treatment.

(e) Transportation of a material or commodity listed in subsection (b) for research or diagnostic purposes moving from a rapid ohia death infested area to a rapid ohia death restricted area of the State, shall be under permit, using safeguards approved by the [chief]SPRO, to [~~an approved~~] a facility[-] inspected and approved by the SPRO prior to transport.

(f) Soil, including soil as a planting medium, may be shipped from a rapid ohia death infested area to a rapid ohia death restricted area of the State subject to pre-shipment testing as provided in subsection (c) and, if applicable, subject to treatment as provided in subsection (d). A shipper of soil that is an active participant in the department's intrastate compliance agreement program in which the shipper is required to maintain *Ceratocystis* [~~*fimbriata*-free~~] *lukuohia* and *C. huliohia*-free status as a condition for soil movement from an infested area is subject to testing as required by the compliance agreement and permit.

(g) Finished ohia wood products, such as wood flooring, furniture, bowls, picture frames, carvings,

and jewelry that have been subjected to a treatment approved by the [chief]SPRO do not require a permit for intrastate transportation.

(h) The [chief]SPRO is authorized to approve treatments and mitigative measures as they are scientifically validated and may revise permit conditions accordingly, as necessary to prevent movement of ohia wilt disease from the infested area and to preserve the quarantine.

(i) The island of Hawaii is designated as a rapid ohia death infested area, notwithstanding any ongoing control projects on the island, and other islands in the State are designated as rapid ohia death restricted areas. The designated rapid ohia death infested area may be expanded by board action as provided in [~~§4-72-4.5.~~]section 10.

(j) The shipper is responsible for all costs, charges, or expenses incident to the inspection or treatment of the soil and ohia material or commodity listed in subsection (b), including charges for overtime wages, fixed charges for personnel services, and meals. [Eff and comp 11/27/16; am and ren §4-72-22; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-23 Quarantine restrictions on coconut rhinoceros beetle and host material. (a) The board has determined that the coconut rhinoceros beetle, *Oryctes rhinoceros* (CRB), presents a serious danger to the horticultural and agricultural industries and the forests of Hawaii.

(b) As used in this section:

(1) "CRB host material" means the host material of the coconut rhinoceros beetle; and

(A) Includes decaying plant material, mulch, trimmings, fruit and vegetative scraps, wood, stumps, compost, and CRB host palms; and

(B) Does not include:

- (i) Plant products intended for consumption, such as coconuts, fruits, nuts, edible leaves, leaves used for cooking, and spices;
- (ii) Plant products preserved from decay by treatment or use, such as lumber, woven hats, dried and painted coconuts, wooden posts, wood carvings, and firewood;
- (iii) Seeds for planting,
- (iv) New and unused commercially bagged plant propagation media or landscaping materials that have not been staged or stored in an infested area for more than 30 days;
- (v) Cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements;
- (vi) Plant propagation media in live plantings (except when used as propagative material for CRB host palms);
- (vii) Live propagative plants (except CRB host palms); and
- (viii) Rock, coral, sand, and gravel.
- (2) "CRB host palms" means all live palm plants in the genera *Cocos*, *Livistona*, *Phoenix*, *Pritchardia*, *Roystonea*, and *Washingtonia* and does not include unsprouted seeds.
- (3) "Transport" means movement of CRB host material out of a single Tax Map Key (TMK) parcel.
- (c) The coconut rhinoceros beetle infested area is designated as the island of Oahu and any other area of the State per section 10.
- (d) Transporting coconut rhinoceros beetle host material within the State is prohibited, except:
 - (1) By the department or an agent of the department for the purposes of monitoring,

control, eradication, or scientific or educational purposes; or

- (2) Pursuant to a permit issued by the department for purposes of coconut rhinoceros beetle monitoring, control, eradication, or scientific or educational purposes at a site inspected and approved by the SPRO prior to transportation.

(e) Except as provided in subsection (f), no person may transport, receive (accept delivery of CRB host material for any purpose), process (meaning the conversion of solid waste into a useful product or preparing for its disposal), sell, barter, donate or otherwise give away, or export CRB host material within a coconut rhinoceros beetle infested area except:

- (1) Pursuant to a compliance agreement issued by the department for commercial activities;
 (2) Pursuant to a permit issued by the SPRO for noncommercial activities, subject to an appropriate treatment or mitigation, as required by the SPRO; or
 (3) Nursery stock that is directly exported from a coconut rhinoceros beetle infested area to a destination outside of the State.

(f) The SPRO is authorized to exempt from the requirements of subsection (e) categories of CRB host material, and activities involving CRB host material that pose a low risk of spreading CRB). [Eff and comp] (Auth: HRS §§141-2, 150A-9)
 (Imp: HRS §§141-2, 150A-8)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. These amendments to chapter 4-72, Hawaii Administrative Rules, shall take effect ten days after

filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

Chairperson, Board of
Agriculture

APPROVED AS TO FORM:

Deputy Attorney General