

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 6

DIVISION OF PLANT INDUSTRY

CHAPTER 66

PESTICIDES

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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]

§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 08/23/19; comp]
(Auth: HRS §149A-33) (Imp: HRS §149A-33)

§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.

"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 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 section 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.

"Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships that exist among these.

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, title 7 United States Code (USC) sections 136 et seq., as amended.

"Finished bait" means an end use bait product 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 that cause diseases of humans or other animals;
- (3) Products for use in reducing bacterial counts in water or air; and
- (4) Products intended for use as wood preservatives that 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 processed foods includes processed animal feed and the term pharmaceuticals is

- intended to include cosmetics); and
- (2) Paints 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 administrative 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.

"LC₅₀" means a concentration of substance, expressed as parts per million parts of medium, which is lethal to fifty per cent of the test population of animals under test conditions acceptable for registration under FIFRA.

"LD₅₀" means a single dermal or oral dose of a substance, expressed as milligrams per kilogram (mg/kg) of body weight, which is lethal to fifty per cent of the test population of animals under test conditions acceptable for registration under FIFRA.

"License" means the process of being allowed to register a pesticide product pursuant to provisions of chapter 149A, Hawaii Revised Statutes.

"Licensed sales outlet" or "Dealer" means a specified site authorized by annual 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 meet the requirements established in section 4-66-52.

"Licensed pesticide dealer representative" or "pesticide dealer representative" means a person authorized to sell restricted use pesticides in a permitted sales outlet and who has successfully passed an examination required by the head and obtained a 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.

"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.

"Person" means any individual, firm, corporation, association, or partnership or any organized group of persons whether incorporated or not.

"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 title 40, Code of Federal Regulations section 170.507 [~~(2018)~~] (2023).

"Pesticide" means:

- (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
- (2) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

A product that is not intended to prevent, destroy, repel, or mitigate a pest, or to defoliate, desiccate or regulate the growth of plants, is not considered to be a

pesticide. The following types of products or articles are not considered to be pesticides unless a pesticidal claim is made on the label or in connection with the sale and distribution:

- (a) Deodorizers, bleaches, and cleaning agents;
- (b) Products not containing toxicants, intended only to attract pests for survey or detection purposes, and labeled accordingly; and
- (c) Products that are intended to exclude pests only by providing a physical barrier against pest access, and that contain no toxicants, such as certain pruning paints to trees.

"Private pesticide applicator" or "private applicator" means a certified pesticide applicator who uses or supervises the use of any pesticide 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, and building roof tops, that directly enters into lakes, rivers, wetlands, coastal waters, or other surface waters, 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 that, unless otherwise prescribed by a pesticide's labeling, 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 immediately able to communicate with the non-certified applicator, even though the certified applicator is not physically present at the time and place the pesticide is applied, and as further defined in section 171.201 of title 40, Code of Federal Regulations [~~(2018)~~] (2023).

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

- (1) Pre-application activities involving mixing and loading the pesticide.
- (2) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a non-certified applicator.
- (3) Other pesticide-related activities, including, but not limited to, transporting or storing pesticide containers 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 08/23/19; comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§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, these rules, and the penalty provisions as provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; comp]
 (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-4 Incorporation of 40 CFR part 156 [~~(2017)~~ (2023)]; contents of the pesticide label; generally. (a) Title 40, part 156, Code of Federal Regulations (CFR), published by the Office of the Federal Register, as amended as of July 1, [~~2017~~] (2023), is made a part of this chapter subject to the substitutions and amendments set forth in sections 4-66-4 to 4-66-31. "Appendix B, 40 CFR part 156 [~~(2017)~~ (2023)," adopted _____, is appended at the end of this chapter.

(b) 40 CFR section 156.10(a)(1) [~~(2017)~~] (2023) is incorporated in this section. The federal term "Act" in 40 CFR section 156.10(a)(1) [~~(2017)~~] (2023) is supplemented with the indicated state term, as incorporated and amended in this section:

"Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-5 Label; name, brand, or trademark. 40 CFR section 156.10(b)(1) [~~(2017)~~] (2023) is incorporated in this section. The federal terms "Administrator" and "Registration" in 40 CFR section 156.10(b)(1) [~~(2017)~~] (2023) are supplemented with the indicated state term, as incorporated and amended in this section:

- (1) "Administrator" includes the administrative head of the division of plant industry, Hawaii department of agriculture, or any officer or employee to whom authority has been duly delegated.
- (2) "Registration" includes the state term "license", which means the process of being allowed to register a pesticide product pursuant to the provisions of chapter 149A,

Hawaii Revised Statutes. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-14, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-6 Label; name and address of producer, registrant, or person for whom produced. 40 CFR section 156.10(c) [~~2017~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-7 Label; net weight or measure of contents. 40 CFR section 156.10(d) [~~2017~~] (2023) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/2006; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-8 Label; product registration number. 40 CFR section 156.10(e) [~~2017~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-9 Label; producing establishment registration number. 40 CFR section 156.10(f) [~~2017~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-10 Label; ingredient statement; generally. 40 CFR section 156.10(g) (1) [~~2017~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp]

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

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

40 CFR section 156.10(g)(2)(i) to (ii) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-12 Label; names to be used in ingredient statement.

40 CFR section 156.10(g)(3) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-13 Label; statements of percentages.

40 CFR section 156.10(g)(4) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

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

40 CFR section 156.10(g)(5) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-15 Label; deterioration.

40 CFR section 156.10(g)(6) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-16 Label; inert ingredients. 40 CFR section 156.10(g)(7) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-17 Label; warning and precautionary statements; generally. 40 CFR section 156.60 [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.60) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.60)

§4-66-18 Label; required front panel statements. 40 CFR sections 156.62, 156.64, 156.66, and 156.68 [~~(2017)~~] (2023) are incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §§156.60 to 156.68) (Imp: HRS §§149A-15, 149A-33; 40 CFR §§156.60 to 156.68)

§4-66-19 Label; other required warnings and precautionary statements. 40 CFR sections 156.70 and 156.78 [~~(2017)~~] (2023) are incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; 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)

§4-66-20 Label; directions for use; generally. 40 CFR section 156.10(i)(1)(i) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-21 Label; placement of directions for use. 40 CFR section 156.10(i)(1)(ii) [~~(2017)~~] (2023) is

incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-22 Label; exceptions to requirement for directions for use. 40 CFR section 156.10(i)(1)(iii)(A) to (C) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-23 Label; contents of directions for use. 40 CFR section 156.10(i)(2) [~~(2017)~~] (2023) is incorporated in this section. Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-24 Label; statement of use classification; generally. 40 CFR section 156.10(j) [~~(2017)~~] (2023) is incorporated in this section. The federal term "General use" in 40 CFR section 156.10(j) [~~(2017)~~] (2023) is replaced by the indicated state term, as incorporated and amended in this section:

"General use" is replaced with the state term "nonrestricted". [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-25 Repealed. [R 12/16/06]

§4-66-26 Label; restricted use classification. 40 CFR section 156.10(j)(2) [~~(2017)~~] (2023) is incorporated in this section. 40 CFR section 156.10(j)(2)(i)(B) (2017) is replaced by the indicated paragraph, as incorporated and amended in this section:

"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." If the head determines that other State regulatory restrictions shall be imposed for the protection of the public, the head may require appropriate terms of restriction as a condition of licensing." [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-27 Label; prominence and legibility. 40 CFR section 156.10(a)(2) [~~2017~~] (2023) is incorporated in this section. The federal terms "Act" and "Regulation" in 40 CFR section 156.10(a)(2) [~~2017~~] (2023) are supplemented with the indicated state terms, as incorporated and amended in this section:

- (1) "Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes.
- (2) "Regulation" includes the state term "rule", which refers to title 4, Hawaii Administrative Rules. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-28 Label; language to be used. 40 CFR section 156.10(a)(3) [~~2017~~] (2023) is incorporated in this section. The federal term "Agency" in 40 CFR section 156.10(a)(3) [~~2017~~] (2023) is supplemented with the indicated state term, as incorporated and amended in this section:

"Head" means the administrative head of the division of plant industry, Hawaii department of agriculture, or any officer or employee to whom authority has been duly delegated. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-29 Label; placement. 40 CFR section 156.10(a)(4)(i) to (ii) [~~(2017)~~] (2023) is incorporated in this section. The federal term "Act" in 40 CFR section 156.10(a)(4)(i) to (ii) [~~(2017)~~] (2023) is supplemented by the indicated state term, as incorporated and amended in this section:

"Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

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

(a) 40 CFR section 156.10(a)(5) [~~(2017)~~] (2023) is incorporated in this section.

(b) The federal terms "Act" and "Regulation" in 40 CFR section 156.10(a)(5) [~~(2017)~~] (2023) are supplemented with the indicated state term, as incorporated and amended in this section:

- (1) "Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes, and citation to section 149A-2, Hawaii Revised Statutes.
- (2) "Regulation" includes the state term "rule", which refers to title 4, Hawaii Administrative Rules.

(c) The federal term "device" in 40 CFR section 156.10(a)(5) [~~(2017)~~] (2023) is replaced by the indicated state term, as incorporated and amended in this section:

- (1) "Device" is replaced with the state term "nonchemical pest control device". [Eff 7/13/81; am and comp 12/16/06; am and comp]

8/23/19; am and comp] (Auth:
HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp:
HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-31 Label; final printed form. (a) 40 CFR section 156.10(a)(6)(i) to (ii) [~~(2017)~~] (2023) is incorporated in this section.

(b) The federal terms "Agency" and "Registration" in 40 CFR section 156.10(a)(6)(i) to (ii) [~~(2017)~~] (2023) are supplemented with the indicated state term, as incorporated and amended in this section:

- (1) "Agency" includes the state term "head", which means the administrative head of the division of plant industry, Hawaii department of agriculture, or any officer or employee to whom authority has been duly delegated.
- (2) "Registration" includes the state term "license", which means the process of being allowed to register a pesticide product pursuant to the provisions of chapter 149A, Hawaii Revised Statutes.

(c) The federal term "microfilm" in 40 CFR section 156.10(a)(6)(ii) (2017) is replaced by the indicated state term, as incorporated and amended in this section:

- (1) "Microfilm" is replaced with the state term "text.PDF or similar format". [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp

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

§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 that meet or exceed 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 (40 CFR sections 156.62, 156.64, 156.66, and 156.68 [~~(2017)~~])

- (2023));
- (2) Pesticides or pesticide uses 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 that can reasonably be anticipated to result in contamination of groundwater or significant reductions in 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 section 4-66-32(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 which pesticides, pesticide formulations, pesticide products, or pesticide uses meet or exceed the criteria set forth in section 4-66-32(b) and shall submit those items for review by the department.

(e) Once the review process under section 4-66-32(c), or if applicable, an evaluation under section 4-66-32.1(c), has been completed, the head shall submit a list of those pesticides, pesticide formulations, pesticide products, and pesticide uses deemed appropriate for classification as State restricted use for adoption by the board.

(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, pesticide products, or pesticide

uses 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 8/23/19; am and comp

] (Auth: HRS §§149A-19, 149A-33; 7 USC §136v (a)-(b), 7 USC §136w-1 (a)-(b)) (Imp: HRS §§149A-19, 149A-33)

§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 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 pesticide shall be evaluated.

(b) The head shall evaluate any pesticide when unreasonable adverse effects to humans or the environment have been 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 that are equal to or exceed twenty per cent of the established federal or State health standards or advisories;
- (3) Pesticide residues in food or feed are present in levels exceeding the established tolerances;
- (4) Fish or wildlife hazard, including hazards to endangered species;
- (5) Toxicity to non-target organisms;
- (6) Hazardous packaging;

- (7) Misbranded as established in sections 4-66-4 to 4-66-30 (40 CFR part 156 (2017));
 - (8) Other information suggesting unreasonable adverse effects on humans or the environment associated with the use of a specific pesticide; and
 - (9) Discovery that data upon which a license was issued are false, misleading, or incomplete.
- (c) The evaluation of 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 pesticide, identification of the benefits of the pesticide, identification of alternatives to the 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, requirement of an annual use permit, 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 8/23/19; comp] (Auth: HRS §§149A-14, 149A-33) (Imp: HRS §149A-33)

§4-66-33 Pesticide licensing; exceptions. (a)

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

(b) No person may distribute in the State, any pesticide 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 the identity and purpose for which 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 the pesticides are for disposal only, and accompanied by sufficient information to identify products and to ensure that product can be handled with minimum hazard to 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 a FIFRA, section 18 emergency exemption; and
 - (6) Upon written notice to the head, pesticides distributed to research laboratories for the purpose of laboratory or 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 laboratory or enclosed space production tests or field trial, does not expect to receive any benefit in pest control from its use. Notice shall be provided on forms prescribed by the head. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp]
(Auth: 40 CFR §152.30; HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-19, 149A-33)

§4-66-34 Applications for licensing pesticides and for approval of nonchemical pest control devices. The procedures for licensing pesticides, or approval of nonchemical pest control devices as defined in chapter 460J, Hawaii Revised Statutes, 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 prescribed by the department and shall contain the following information: name and address of the 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 no less than thirty calendar days prior to the date licensing is desired to take effect.
 - (4) Applications shall be accompanied by 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 that is required to accompany the pesticide or nonchemical pest control device when offered for sale or distribution, including all claims, directions for use, and any other materials specified by the head.
 - (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 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, a description of the tests conducted according to the procedures described below and test results thereof on which claims are based, including efficacy, reliability, safety, and other supporting data that 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 for testing upon request.
- (9) The department shall provide the applicant with a description of the tests to be conducted, and estimated schedule to complete the tests.
- (10) 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 8/23/19; 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)

§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 in the pesticide product's directions for use, use classification, and other information contained in 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. 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 8/23/19; comp
] (Auth: HRS §§149A-13,
149A-19, 149A-33) (Imp: HRS §§149A-13,
149A-19, 149A-33)

§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 these rules, 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 thirty calendar days, 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. 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 regulations implementing FIFRA, the head shall notify EPA and may suggest corrections that would bring the labeling into compliance.

(e) 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 section 149A-14(d), Hawaii Revised Statutes. [Eff 7/13/81 am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-13, 149A-14, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-14, 149A-19, 149A-33)

§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; directions for use to meet the special local need; 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 that 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. Situations 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 whether the claims made for the product in the registration application are warranted. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; 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)

§4-66-38 Special local need; unreasonable adverse effects. (a) Under the following circumstances, prior to issuing a special local need registration, 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 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.

(b) The determination required by subsection (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 8/23/19; 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)

§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~~] must 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~~] must also contain a statement identifying "For distribution and use only within the 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~~] must

be accompanied at the time of use by supplemental labeling 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) If the head classifies for restricted use a product or product use registered by the head, which is not required to be classified as restricted use by section 4-66-32, then the head shall require supplemental labeling for the product or product use to have additional appropriate precautions, and a statement that the product or product use is for restricted use.

(b) All products registered by the head [~~shall~~] must meet all appropriate federal packaging standards as well as all appropriate standards for coloration established and contained in section 4-66-42.1. Prior to issuing any registration, the head shall determine that the product conforms to these requirements. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; 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)

§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 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 8/23/19; comp] (Auth: HRSS§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)

§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 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 because of health, safety, or environmental concerns. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; 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)

§4-66-42 Repealed. [R 12/16/06]

§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 for residues of the pesticide under title 21 United States Code section 346a (a)-(q) (2017), 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 sections 180.910, 180.920, or

180.2020, title 40, Code of Federal Regulations (2017). [Eff and comp 12/16/06; am and comp 8/23/19; 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)

§4-66-43 Enforcement. (a) 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 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 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, Official Methods of Analysis of AOAC International (20th edition 2016), where applicable, and other methods as may be necessary to determine whether the product complies with the Act or these rules.

(d) A notice of 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 these rules, 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 these rules; 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.

(e) The head may issue "stop sale" and "removal from sale" orders to vendors regarding any pesticide or nonchemical pest control device that violates or fails to comply with the provisions of the Act or 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 "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.

(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 these rules. 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 8/23/19; comp] (Auth: HRS §§149A-11, 149A-20, 149A-21, 149A-33) (Imp: HRS §§149A-11, 149A-20, 149A-21, 149A-33)

§4-66-44 Notice of enforcement action.

Publication of judgments of the courts in cases arising under the criminal or seizure provisions of the Act or these rules, and any final order issued by the department for violation of the Act or these rules, 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

§4-66-43

8/23/19; comp] (Auth: HRS §§149A-21, 149A-33) (Imp: HRS §§149A-21, 149A-33)

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

Experimental use permits may be issued for the intrastate shipment, delivery or use of a pesticide product 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 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 8/23/19; 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)

§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 that is currently subject to an EPA cancellation or suspension of registration order, or 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 that:
 - (A) Is not specifically considered in, or 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 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 8/23/19; 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)

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

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, enclosed space production, or limited field trials of less than one-fourth acre, in which the 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; (2) the tests will be conducted by recognized research personnel; and (3) the research personnel conducting the tests do not expect to receive any benefit, other than the research, in pest control from the use of the substance or mixture of substances.

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 these rules. No State experimental use permit is required if an experimental use permit has been issued by the EPA for the proposed trial(s).

Written notification shall be submitted on forms prescribed by the head. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (a)) (Imp: HRS §§149A-19, 149A-22, 149A-33)

§4-66-48 Experimental use permits; provisions for issuance. (a) A permit is required for a pesticide intended for experimental use 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, codified at title 21 United States Code section 346a (2017); or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, codified at title 21 United States Code section 348 (2017); 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, codified at title 21 United States Code section 346a (2017), or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, section 348 of title 21, United States Code (2017), which would be hazardous to 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 prescribed by the head. Each application shall contain the following:

- (1) Name and address of the shipper, 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 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 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 that shall bear:
 - (A) The prominent statement "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 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 that, if the shipper 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 specified in this subsection; and

- (9) A statement as to the disposal of any unused portions of the experimental pesticide. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; 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)

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

(a) The head may limit the quantity of a pesticide covered by 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, 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 dated. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; 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)

§4-66-50 Experimental use permits; reports. 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. 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. 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 8/23/19; 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)

§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 permittee or person supervising the experiment to immediately 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 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 8/23/19; 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)

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

(b) Any manufacturer, registrant, or distributor of a restricted use pesticide who has no sales outlet within this State, and who sells or distributes the pesticides directly to the user, shall obtain a Hawaii pesticide dealer 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 restricted use pesticides dealer sales outlets shall have a pesticide dealer representative. The names of the pesticide dealer representatives shall be submitted together with the application for the dealer sales outlet permit. Each restricted use pesticide dealer representative shall obtain a permit.

(e) Persons seeking to obtain a pesticide dealer representative permit shall apply for examination on

forms 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, rules, 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 permit issued to a restricted use pesticide dealer representative shall be valid for 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 restricted use pesticide dealer permitted to sell restricted use pesticides shall be responsible for the acts of all pesticide dealer representatives and individuals employed in the solicitation, sale, distribution and handling of pesticides.

(h) Restricted use pesticide dealer sales outlets shall only distribute, solicit, sell, offer for sale, hold for sale, receive order for sale, or transport restricted use pesticides to a certified pesticide applicator, or non-certified applicator under the supervision of 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 these rules, whether committed by the dealer, dealer representative, or by any other officer, agent, or employee of the dealer may result in suspension or revocation of the dealer's permit or the dealer representative's permit, or both, as well as any other penalty provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp

] (Auth: HRS §§149A-11, 149A-17, 149A-18, 149A-19, 14'A-33) (Imp: HRS §§149A-11, 149A-17, 149A-18, 149A-19, 149A-33)

§4-66-53 Dealers' records and reports. (a) Dealers permitted to sell or distribute restricted use

pesticides [~~shall~~] must keep a record of each sale, distribution, delivery, theft, spill, or any other activity affecting the amount of restricted use pesticides, pesticides requiring an annual permit pursuant to section 4-66-63.1, and special permit to apply restricted use pesticides by aerial application pursuant to section 4-66-64. These records [~~shall~~] must be kept at each sales outlet on forms or through other media approved by the head.

(b) Records [~~shall~~] must 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 (including product name and EPA registration number and any applicable emergency exemption or special local need registration number), 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 permitted sales outlet's records as specified in this section shall be submitted to the head within fifteen calendar days after the end of each calendar month for which the record is being kept. A copy [~~shall~~] must be kept at the permitted sales outlet where the sales were made for a period of [~~one year~~] two years.

(d) Failure to submit a copy of the permitted sales outlet's records 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 or any other penalty provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-17, 149A-19, 149A-33) (Imp: HRS §§149A-17, 149A-19, 149A-33)

§4-66-54 Storage, display, and 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 8/23/19; comp] (Auth: HRS §§149A-15.5, 149A-31, 149A-33) (Imp: HRS §§149A-15.5, 149A-31, 149A-33)

§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 11-262.1, Hawaii Administrative Rules.

(b) If the disposal method is not specified on the label, the pesticide container shall be triple-rinsed or equivalent, punctured, and placed in the trash for refuse collection or offered for recycling, if appropriate.

(c) Owners of unused pesticides may contact the Department's Pesticide Branch for information on pesticide disposal. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-33) (Imp: HRS §§149A-19, 149A-33)

§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 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) Crop pest control. For persons using or supervising the use of restricted use pesticides in production of agricultural 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) Animal pest control. 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 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;
- (D) Seed treatment. For persons using or supervising the use of restricted use pesticides other than by fumigation on seeds in seed treatment facilities;
- (2) Category 2, forest pest control. For persons using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed production;
- (3) Category 3, ornamental and turf pest control. For persons using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental plants, trees, shrubs, flowers and turf;
- (4) Category 4, aerial pest control. For persons using or supervising the use of restricted use pesticides by aerial application;
- (5) Category 5, aquatic pest control. 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 sections 4-66-56(8) and 4-66-56(9);
- (6) Category 6, right-of-way pest control. For persons using or supervising the use of restricted use pesticides in the maintenance of 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 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 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 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 7(A) and 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 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 persons using or supervising the use of restricted use pesticides 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 7(A), 7(B), or 7(C);
- (F) Specialty 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. 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. For state, 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 Protection Act, title 7, chapter 104, sections 7701-7786, United States Code (2017);

- (10) Category 10, demonstration, research and instructional pest control. 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 persons using or supervising the use of restricted use pesticides other than by fumigation applied through an irrigation system. Certification in this category requires concurrent certification in category 1(A), 2, 3, or 10.

(c) Private pesticide applicators 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. The categories are as follows:

- (1) Category 1, general agricultural pest control. 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 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 persons conducting agricultural pest control other than by fumigation, 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 08/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §§171.5, 171.101) (Imp: HRS §149A-33; 40 CFR §§171.5, 171.101)

§4-66-57 General standards for certification of applicators. (a) Applicants for certification [~~shall~~] must be at least eighteen years of age and shall possess a history of honesty, truthfulness, financial integrity and fair dealing. Such personal history shall be based on information obtained intra-departmentally, interdepartmentally, and/or through publicly available records;

(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 or any alternate methods employed by the department to determine applicator competency, or both. Examinations are based upon standards that meet or exceed those set forth in this section and section 4-66-58. The examination shall test knowledge applicable to the certification category or subcategory, 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~~] must be presented and answered in writing;
- (2) Examinations [~~shall~~] must be proctored by an individual designated by the department;
- (3) At the time of examination, each person seeking certification [~~shall~~] must 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~~] must be given instruction on examination procedure before beginning the examination;
- (5) Examinations [~~shall~~] must 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~~] must 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~~] must demonstrate practical knowledge of the principles and practices of pest control. The knowledge [~~shall~~] must include the following areas:

- (1) 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 that certification is required in the certification category appropriate to the type and site of the application; an understanding of labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator; an understanding of labeling requirements that a certified applicator must be physically present at the site of the application; an understanding of the meaning of product classification as either general or restricted use and that a product may be unclassified; understanding and complying with product-specific notification requirements; and recognizing the difference between mandatory and advisory labeling language;
- (2) 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; 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) 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 pesticides, including 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) Application equipment. Practical knowledge of type, maintenance, use, and calibration of pesticide application equipment and an

understanding of advantages and limitations of each type of equipment. Additional knowledge of calibration shall be required of applicants using or supervising the use of highly specialized equipment;

- (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 and that use of a fumigant, aerial application, or other special category pesticide requires additional certification; 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) Laws, rules, and regulations. Knowledge of all applicable federal and State laws, rules, and regulations;
- (9) Responsibilities of supervisors of non-certified applicators. Practical knowledge of applicable Federal and State supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides by non-certified applicators. Knowledge of the responsibilities of certified applicators supervising non-certified applicators using restricted use pesticides; understanding and complying with title 40, section 171.201, Code of Federal Regulations [~~2018~~] (2023); 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) 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. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §§171.5, 171.103) (Imp: HRS §149A-33; 40 CFR §§171.5, 171.103)

§4-66-58 Specific standards for certification of applicators. In addition to satisfying the requirements of section 4-66-57, applicants for certification [~~shall~~] must demonstrate 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) Category 1, agricultural pest control, which includes the following subcategories:
- (A) Crop pest control applicators [~~shall~~] must demonstrate practical knowledge of the crops, grasslands, and non-crop agricultural lands and the specific pests on those areas on which the applicator may be using restricted use pesticides. Applicators in this category [~~shall~~] must demonstrate operational knowledge concerning soil and water

problems, pre-harvest intervals, restricted entry intervals, phytotoxicity, potential for environmental contamination, non-target injury and other problems resulting from the use of restricted use pesticides in agricultural areas. The required knowledge includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistency beyond the intended period of pest control, and for non-target exposures;

- (B) Animal pest control applicators [~~shall~~] must demonstrate practical knowledge of such animals and the animals' associated pests. The required knowledge includes specific pesticide toxicity and residue potential, and the hazards associated with factors such as formulation, application techniques, age of animals, stress and extent of treatment; and
- (C) Soil and non-soil fumigant pest control applicators [~~shall~~] must 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~~] must 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. Soil and non-soil fumigant pest control applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigant applications and fumigation applications to sites other than soil as specified in title 40, Code of Federal Regulations section 171.103(d)(13) and (14) (2023);

(D) Seed treatment applicators must demonstrate practical knowledge including recognizing types of seeds to be treated, the effects of carriers and surface active agents on pesticide binding and germination, the hazards associated with handling, sorting and mixing, and misuse of treated seed, the importance of proper application techniques to avoid harm to non-target organisms, and the proper disposal of unused treated seeds.

(2) Category 2, forest pest control applicators [~~shall~~] must demonstrate practical knowledge of the types of forests, forest nurseries, seed production and pest involved. The required knowledge [~~shall~~] must include the cyclic occurrence of certain pests, population dynamics 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~~] must 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, aquatic situations, and harbor wildlife, the applicator [~~shall~~] must 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;

- (3) Category 3, ornamental and turf pest control applicators [~~shall~~] must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, flowers, groundcover, and turf, including knowledge of potential phytotoxicity 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. Because of the frequent proximity of human habitations to application activities, applicators in this category [~~shall~~] must also demonstrate practical knowledge of application methods that will minimize or prevent hazards to humans, pets, and other domestic animals;
- (4) Category 4, aerial pest control applicators [~~shall~~] must demonstrate practical knowledge of pest problems and pest control practices associated with performing aerial application of restricted use pesticides as specified in title 40, Code of Federal Regulations section 171,103(d)(15) (2023). Applicators [~~shall~~] must 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) Category 5, aquatic pest control applicators [~~shall~~] must demonstrate 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. Applicators [~~shall~~] must also demonstrate the principles of limited area applications;
- (6) Category 6, right-of-way pest control applicators [~~shall~~] must demonstrate 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. Right-of-way pest control applicators [~~shall~~] must also demonstrate knowledge of the 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. Applicators doing right-of-way work [~~shall~~] must demonstrate knowledge of application equipment, containment of the pesticide within the right-of-way area, and drift control methods and procedures;
- (7) Category 7, industrial, institutional, and structural pest control applicators

~~[shall]~~ must demonstrate 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]~~ must 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]~~ must also demonstrate knowledge of the pesticide labeling of the products typically used in the applicator's operations, including hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws, rules, and regulations. Applicators in subcategories using or supervising the use of fumigant restricted use pesticides must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications to sites other than soil as specified in title 40, Code of Federal Regulations section 171.103(d)(14) (2023);

- (8) Category 8, public health pest control applicators ~~[shall]~~ must demonstrate 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]~~ must demonstrate competency in nonchemical control methods such as sanitation, waste disposal, and drainage. Applicators ~~[shall]~~ must also demonstrate knowledge of hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws, rules, and regulations;

- (9) Category 9, regulatory pest control applicators ~~[shall]~~ must demonstrate practical knowledge of regulated pests, 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]~~ must demonstrate knowledge of factors influencing introduction, spread, and population dynamics of regulated pests;
- (10) Category 10, demonstration, research, and instructional pest control applicators ~~[shall]~~ must 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]~~ must 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 technical Representatives visiting or working in the State for thirty days or less per year need not be certified in this category if certified in an equivalent category by a jurisdiction authorized by~~].

~~the EPA to issue certifications. 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) Category 11, chemigation pest control applicators [~~shall~~] must 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
 - (1) Category 1, general agricultural pest control applicators [~~shall~~] must demonstrate practical knowledge of agricultural commodities grown in the State and the specific pests relevant to these commodities. Applicators in this category [~~shall~~] must demonstrate practical knowledge of how to avoid contamination of ground and surface waters, demonstrate an understanding of preharvest intervals, restricted entry intervals, and entry restricted periods and areas. The applicator [~~shall~~] must also demonstrate a practical understanding of phytotoxicity, 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~~] must demonstrate a complete understanding of the Worker Protection Standard, part 170 of title 40, Code of Federal Regulations [~~(2018)~~] (2023);

- (2) Category 2, agricultural pest control fumigant applicators [~~shall~~] must demonstrate practical knowledge of pest problems and pest control practices associated with soil and non-soil fumigant applications. Applicators in this category [~~shall~~] must demonstrate knowledge of 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~~] must 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. Agricultural pest control fumigant applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigant applications and fumigation applications to sites other than soil as specified in title 40, Code of Federal Regulations section 171.105(d) and (e) (2023); and
- (3) Category 3, agricultural chemigation pest control applicators [~~shall~~] must

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~~] must also demonstrate a complete understanding of the Worker Protection Standard, title 40, part 170, Code of Federal Regulations [~~(2018)~~] (2023).

(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.

(d) Any certified commercial pesticide applicator or certified private pesticide applicator who misuses a pesticide, is criminally convicted under section 14(b) of FIFRA, or receives a final order imposing a civil penalty under section 14(a) of FIFRA 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 08/23/19; am and comp]
(Auth: HRS §149A-33; 40 CFR §§171.5, 171.103, 171.105)
(Imp: HRS §149A-33; 40 CFR §§171.5, 171.103, 171.105)

§4-66-59 Repealed. [R 12/16/06]

§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, the applicant [~~shall~~] must be at least eighteen years of age. Application shall be made on forms prescribed by the head. Forms are available at the department or on-line doa.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~~] must 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. The core examination shall cover the general standards and procedures specified in section 4-66-57. Category or subcategory 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 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.
- (3) Certification in a category or subcategory under section 4-66-58 requires a passing score of seventy per cent or better on 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 first obtains a passing score on the core examination. A certificate may be issued if the applicant passes the core examination and any other category and subcategory examinations, meets all other requirements for certification, and complies with all other State and federal requirements.

- (4) For renewal of commercial applicator certificates, application for renewal shall be made no sooner than ninety days before and no later than thirty 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. An applicant for recertification shall complete one of the following procedures:

- (A) 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. 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)	Crop Pest Control	25
1(B)	Animal Pest Control.	20
1(C)	Soil and Non-soil Fumigant Pest Control .30*	
1(D)	Seed treatment.	20
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)	Fumigation Pest Control	25*
7(B)	Termite Pest Control.	20
7(C)	General Pest Control.	30
7(D)	Institutional Pest Control.	30
7(E)	Vault Fumigation Pest Control	25*
7(F)	Specialty Categories.	20
8	Public Health Pest Control.	24
9	Regulatory Pest Control	20
10	Demonstration, Research, & Instructional Pest Control.	30
11	Chemigation Pest Control.	5*

- *For asterisked items, five 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) 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, meets all other requirements for certification, and complies with any other State and federal requirements.
 - (b) The procedures for certifying private applicators and renewal of private applicator certifications are as follows:

- (1) For initial certification of private applicators and renewal of private applicator certificates, the applicant [~~shall~~] must be at least eighteen years of age. Application shall be on forms 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~~] must 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 private applicator shall pass a written examination with a score of seventy per cent or better. The examination shall cover the general standards specified in section 4-66-57 and the specific 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 any examination, that applicant is eligible to be re-examined no sooner than fourteen calendar days after the date of the failed examination. If the applicant passes the examination, meets all of the other requirements for certification, and complies with any other State and federal requirements, a certificate may be issued.
- (3) For renewal of private applicator certification, application for renewal shall

be made no sooner than ninety days before 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. An applicant for recertification shall complete one of the following procedures:

- (A) Continuing education. A certified applicator may be found eligible for recertification upon successfully completing a continuing education program by accumulating twenty hours of training credits. Applicators certified in agricultural fumigation, or agricultural chemigation, or both, must accumulate five 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 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) 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 public safety being compromised. _

All testing accommodations shall cover the general standards specified in section 4-66-57 and the specific standards specified in section 4-66-58(b). 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 and environment. The head shall be solely responsible for determining what constitutes successful passage of certification testing under special circumstances. Renewal of certificates issued under this section can be granted only through the procedures described in this paragraph. 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-34, 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 to the head, requesting approval of certification credits for each training class no less than thirty calendar days prior to the scheduled date of each class. A fee for expedited approval of certification credits may be assessed for approval requests received 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 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 approve or deny credits within ten business days following receipt of the 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 by the head. The number of credits 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.
 - (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 training class sponsor or provider shall forward the record of attendance to the head within thirty calendar 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 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 calendar days of any change. 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. If the certificate holder requests 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 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §§171.105, 171.107) (Imp: HRS §149A-33; 40 CFR §§171.105, 171.107)

§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 each category applicable to the restricted use pesticide being used.

- (2) The certified applicator [~~shall~~] must give the non-certified applicator use-specific written instructions in a manner the non-certified applicator can understand. The use-specific instructions [~~shall~~] must include labeling directions, precautions, and requirements applicable to the site, method of application, and pesticide used. The use-specific instructions must also include how the characteristics of the use site (e.g., surface and ground water, endangered species, local population and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The certified applicator must ensure that the non-certified applicator has been instructed within the last twelve months in the safe operation of any equipment the non-certified applicator will use for mixing, loading, transferring, or applying pesticides. The certified applicator [~~shall~~] must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer and can [~~reasonably~~] be used without risk of reasonably foreseeable adverse effects to [~~by~~] the non-certified applicator, other persons, or the environment. The certified applicator [~~shall~~] must 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~~] must 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~~] must ensure that

the means to immediately communicate with the certified applicator is available to each non-certified applicator. The certified applicator must be physically present at the site of the use being supervised when required by the product labeling.

- (3) The certified applicator shall be responsible for all violations of chapter 149A, Hawaii Revised Statutes and these rules.
- (4) The non-certified applicator [~~shall~~] must [~~meet the minimum age requirement to use or apply restricted use pesticides under the supervision of a certified applicator~~] be at least eighteen years of age. The non-certified applicator [~~shall~~] must also meet any other non-certified applicator [~~qualification~~] requirements specified in title 40, [~~part 171,~~] Code of Federal Regulations [~~(2018)~~] section 171.201 (2023).
- (5) The label of the pesticide being used must not prohibit its use by a non-certified applicator under the direct supervision of a certified applicator.
- (6) Failure to abide by chapter 149A, Hawaii Revised Statutes and these rules 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 8/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §171.201) (Imp: HRS §149A-33; 40 CFR §171.201)

§4-66-62 Certified pesticide applicator

recordkeeping. (a) Certified pesticide applicators [~~shall~~] must keep records of all restricted use pesticide applications at the applicator's principal place of business.

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

(c) Recordkeeping information [~~shall~~] must

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) Records required under 40 Code of Federal Regulations section 171.201(e) (2023); and
- (15) Any other information the head deems necessary.

(d) Commercial applicators that apply any pesticide in agricultural operations shall furnish a written record containing the following information to the agricultural employer before 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) Commercial applicators ~~shall~~ must retain a copy of the written record furnished to the agricultural employer in compliance with subsection (d). These records must be kept for a period of two years and ~~shall~~ must be made available for inspection and copying by the head during reasonable working hours.

- (f) Beginning January 1, 2019, every certified

restricted use pesticide applicator shall submit to the department, for departmental use, an annual report of all use of restricted use pesticides. The report shall be submitted to the department no later than thirty days following the end of each calendar year on a form prescribed by the head. The report shall include:

- (1) Name of certified applicator and his or her certification number;
- (2) EPA registration number of each restricted use pesticide used;
- (3) Commercial product name of each restricted use pesticide used;
- (4) Active ingredient(s) of each restricted use pesticide used;
- (5) The total quantities for each restricted use pesticide used;
- (6) The total area treated for each restricted use pesticide used;
- (7) The date on which the restricted use pesticide application occurred; and
- (8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.

(g) The department shall produce a summary from the information collected under subsection (f), for public disclosure, by county that includes:

- (1) The total quantities used, by EPA registration number, commercial product names, and active ingredients for each restricted use pesticide used; and
- (2) The total amount of area in the county in which the restricted use application occurred.

(h) Certified pesticide applicators [~~shall~~] must create or verify the existence of records documenting that each non-certified applicator who mixes, loads, transfers, or applies restricted use pesticides has the qualifications required under section 4-66-61(4). The records must include the information required under 40 Code of Federal Regulations section 171.201(e) (2022).

(i) [~~Failure~~] Falsification of any records required to be maintained by certified pesticide applicators or any other 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 08/23/19; am and comp] (Auth: HRS §§149A-33, 149A-26; 40 CFR §171.201) (Imp: HRS §§149A-33, 149A-26, 149A-27; 7 CFR §110, 40 CFR §171.201)

§4-66-63 Repealed. [R 12/16/06]

§4-66-63.1 Annual Use Permit. (a) A pesticide may be designated by the board as requiring an annual use permit for purchase if the department, after an evaluation of pesticide uses in accordance with section 4-66-32.1, 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 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 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 8/23/19; comp] (Auth: HRS §149A-19)
(Imp: HRS §149A-32.5)

§4-66-64 Conditions and limitations on aerial application of restricted use pesticides. (a) No person shall apply a restricted use pesticide by manned or unmanned aircraft except by special permit issued by the head and under the following conditions and limitations:

- (1) Application for a special permit to apply restricted use pesticides by aerial application shall be made on forms prescribed by the head. Forms are available at the department or on-line at <https://hdoa.hawaii.gov>;
- (2) The special permit application shall include date, name, address and certification number of the applicator, purpose of aerial treatment, restricted use pesticide formulation, dosage, method of aerial treatment, the proposed number of treatments to be made, and a sketch or map 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 for aerial application of restricted use pesticides 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 for aerial application of restricted use pesticides shall specify the time period for which the special permit is valid. The head may specify and limit a special permit for aerial application of restricted use pesticides 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 for aerial application of restricted use pesticides 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 no less than twenty-four hours in advance of the aerial treatment unless another time period is specified as a permit condition; and
- (7) The issuance of a special permit for aerial application of a restricted use pesticide 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, humans, and the environment resulting from the aerial treatment or contamination of crops or plants, animals, humans, and the environment resulting from the aerial application of restricted use pesticides.

(b) The following provisions shall apply to the operating conditions of manned or unmanned aircraft and equipment used for aerial application of restricted use pesticides:

- (1) Spray equipment on manned or unmanned aircraft shall be leakproof. Spray nozzles shall be equipped with a device to prevent dribble when spray is turned off;
- (2) All aerial pesticide dispersal equipment shall be inspected and maintained in good working order according to the manufacturer's instructions; and
- (3) Manned or unmanned aircraft used to apply restricted use pesticides, and manned or unmanned aircraft operators, shall comply with all Federal Aviation Administration Regulations.

(c) The head may add further permit conditions as deemed necessary for the protection of the public, or environment, or both.

(d) Failure to comply with the terms or conditions of any special permit for aerial application of restricted use pesticides 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 8/23/19; comp

] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-64.1 Conditions and limitations on pesticide application by means other than aerial treatment. (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) 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 8/23/19; comp

] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-64.2 Conditions and limitations on restricted use pesticide application within buffer zones. (a) Beginning January 1, 2019, no person shall apply a

restricted use pesticide on or within one hundred feet of a school property during normal school hours.

(b) This section shall not apply to whole structure fumigation.

(c) If this section is determined to conflict with any pesticide application information listed on the pesticide label, the more restrictive provision shall apply.

(d) Buffer zones may be determined by tax map key number, or if tax map key number is not an appropriate means of establishing the buffer zone, by property boundaries such as fence lines, landscaping, or other method that is reasonably capable of determining the school's property.

(e) School locations may be identified by readily available public records.

(f) The certified applicator shall be responsible for all violations of chapter 149A, Hawaii Revised Statutes and this rule.

As used in this section:

"Buffer zone" means an area in which no restricted use pesticides may be applied.

"Normal school hours" means Monday through Friday from 7:00 a.m. until 4:00 p.m., excluding days when classes are not in session.

"School" means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school. [Eff and comp 8/23/19; comp] (Auth: HRS §§149A-33, 149A-28) (Imp: HRS §149A-28)

§4-66-65 Repealed. [R 12/16/06]

§4-66-66 Fees. (a) The head shall set forth and collect fees for licensing of restricted use and nonrestricted use pesticides; permitting of restricted use pesticide dealers and dealer representatives; nonchemical pest control devices submitted for approval; certification of applicators; and, document copying as follows:

(1) A fee of \$930 shall be assessed for each

product licensed in the State for each three-year licensing period. A licensee who desires to continue to have the license in effect shall submit an application for renewal and \$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 \$500 shall be assessed annually for each principal sales outlet permit and a fee of \$200 for each branch sales outlet of restricted use pesticide dealers.
 - (3) A fee of \$50 shall be assessed for each examination taken for certification or renewal of certification.
 - (4) A fee of \$50 will be assessed for the issuance of a replacement applicator certificate or replacement of dealer representative permit.
 - (5) A fee of \$100 shall be assessed for the issuance of an initial pesticide applicator certificate or initial restricted use pesticide dealer representative permit, which shall be valid for five years.
 - (6) A fee of \$100 shall be assessed for renewal of a pesticide applicator certificate or renewal of restricted use pesticide dealer representative permit, which shall be valid for five years.
 - (7) A fee of \$50 shall be assessed for each examination taken for pesticide dealer representative permit.
 - (8) A fee of \$.25 per page shall be assessed to copy documents in either paper or electronic format.
 - (9) A fee of up to \$50 per hour may be assessed for educational services, testing, or training provided by the department staff, or independent contractors hired by the department to provide such services.
 - (10) A fee of up to \$100 may be assessed for expedited approval of sponsor or provider offered continuing education training classes.
- (b) Fees shall be waived, upon approval of the head, for personnel of state agencies, 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, 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 8/23/19; comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-66.1 Enforcement action and penalty assessment schedule; collection of penalties. (a) In proposing enforcement actions, the department may use the "Appendix A, enforcement action and penalty assessment schedule" dated _____, which is appended at the end of this chapter and made a part of this section by reference. In selecting an appropriate penalty, the department shall consider the factors in section 149A-41, Hawaii Revised Statutes.

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

(d) In case of inability to collect the administrative penalty or failure to pay all or any portion of the administrative penalty, the head may refer the matter to the department of the attorney general, who shall recover the amount by action in the appropriate court. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-20, 149A-33, 149A-41) (Imp: HRS §§149A-20, 149A-41)

§4-66-67

§4-66-67 Severability. If any section of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected. [Eff 7/13/81; comp 12/16/06; comp 8/23/19; comp]
(Auth: HRS §149A-52) (Imp: HRS §149A-52)

Amendments to and compilation of chapter 4-66, Hawaii Administrative Rules, on the Summary Page dated June 25, 2019, were adopted on June 25, 2019, following public hearings held on November 1, 2018, November 2, 2018, November 5, 2018, November 7, 2018, and November 8, 2018, after public notice was given in the Honolulu Star Advertiser, the Garden Island, the Maui News, West Hawaii Today, and the Hawaii Tribune Herald on October 1, 2018.

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

SHARON HURD
Chairperson
Board of Agriculture

JOSH GREEN, M.D.
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

DEPUTY ATTORNEY GENERAL

Filed

