

November 19, 2018

Board of Agriculture  
Honolulu, Hawaii

HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON PROPOSED  
AMENDMENTS TO CHAPTER 4-66, HAWAII ADMINISTRATIVE RULES, ENTITLED  
"PESTICIDES"

**I. Notice of Public Hearings**

On February 17, 2018 and September 25, 2018, the Hawaii Board of Agriculture gave preliminary approval to appoint a hearings officer and proceed to public hearing on the proposed amendment of Chapter 4-66, *Hawaii Administrative Rules* (HAR) entitled "Pesticides". Pursuant to section 92-41, *Hawaii Revised Statutes* (HRS), a Notice of Public Hearing was published in the City and County of Honolulu, County of Hawaii, County of Kauai, and County of Maui on October 1, 2018. Statewide public notice was published in the Honolulu Star-Advertiser, Garden Island, Hawaii Tribune-Herald, West Hawaii Today, Molokai Dispatch, and Maui News. A notice of public hearing was also provided to the Office of the Lt. Governor and was posted on the Hawaii Department of Agriculture's website on September 28, 2018.

The Notice of Public Hearing stated that the Hawaii Department of Agriculture (HDOA) would hold six public hearings to receive testimony regarding the proposed amendments to Chapter 4-66, HAR on the following dates, times, and at the following locations:

1. November 1, 2018, 2:00 pm – 4:00 pm  
Conference Room, Department of Agriculture  
635 Mua Street  
Kahului, Hawaii 96732
2. November 2, 2018, 5:00 pm – 7:00 pm  
Conference Room, Department of Agriculture, Plant Quarantine Branch  
1851 Auiki Street  
Honolulu, Hawaii 96819
3. November 5, 2018, 2:00 pm – 4:00 pm  
Conference Room, Department of Agriculture  
4398A Pua Loke Street  
Lihue, Hawaii 96766

4. November 7, 2018, 9:00 am – 11:00 am  
Conference Room, Department of Agriculture  
16 East Lanikaula Street  
Hilo, Hawaii 96720
5. November 7, 2018, 3:00 pm – 5:00 pm  
Conference Room, Hale Iako  
Natural Energy Laboratory of Hawaii Authority (NELHA)  
73-970 Makoko Bay Drive  
Kailua-Kona, HI 96740
6. November 8, 2018, 10:00 am – 12:00 pm  
Conference Room, Kulana OIwi  
Department of Hawaiian Homelands/Office of Hawaiian Affairs  
600 Maunaloa Highway  
Kaunakakai, Hawaii 96748

The Notice of Public Hearing also provided that written testimony could be submitted via the U.S. postal service to the Pesticides Branch, Hawaii Department of Agriculture, located at 1428 S. King St., Honolulu, Hawaii 96814, by fax to (808) 973-9418, or email to HDOA.PB@hawaii.gov, until close of business (4:30 pm) on November 8, 2018.

## **II. Hearing Results and Summary of Testimonies**

Testimony relevant to the proposed amendments to Chapter 4-66, HAR are summarized below.

### **A. ORAL TESTIMONY**

**Maui** – Two employees of HDOA were present:

Hearings Officer John McHugh, HDOA Pesticides Branch; and  
Victoria Matsumura – HDOA Pesticides Branch.

Ten members of the public were present:

Sylvia Hamilton – Private Citizen;  
Kai Pelayo – Bayer;  
Jeff Bowman – Bowman Termite;  
Barbara Barry – Private Citizen;  
Marta Greenleaf - Private Citizen;  
Jerry Edlau – Accupest;  
Dennis Fukushima – Dick’s Fumigation;  
Janet Ashman – Hawaii Farm Bureau Federation;  
Sean O’Keefe – Hawaii Farm Bureau Federation; and  
Wakon Childes – Bowman Termite.

No oral testimony was provided.

**Oahu** – Four employees of HDOA were present:

Hearings Officer John McHugh – HDOA Pesticides Branch;  
Victoria Matsumura – HDOA Pesticides Branch;  
Adam Yamamoto – HDOA Pesticides Branch; and  
Esther Medrano – HDOA Pesticides Branch.

Six members of the public were present:

Roy Maeda – Xtermco;  
Wes Otani – Douglas Products;  
Michelle Starke – Bayer;  
Ian Mateo – Pest Tech;  
Sean O’Keefe – A & B/Hawaii Farm Bureau Federation; and  
John Speed – Kilauea Pest Control.

One individual provided oral testimony.

Mr. Ian Mateo of Pest Tech commented on the additional cost burden associated with Act 45 for reporting of restricted use pesticide (RUP) applications as reflected in the proposed rule amendments. The new law/rule will require additional effort to maintain the RUP records due to the reporting requirements, which is the main source of the additional cost from the new law/rule. There was concern that the submission of TMK for the geographic location might require extra time and effort to obtain. The properties serviced by the pest control operators usually have a street address, which is much more accurate for reporting purposes and is data that is already collected. There is concern that if the locations are associated with the RUP reporting and the RUP reports become public, the information will be available to competitors.

**Kauai** – Two employees of HDOA were present:

Hearings Officer John McHugh – HDOA Pesticides Branch; and  
Victoria Matsumura – HDOA Pesticides Branch.

Three members of the public were present:

Sarah Thompson – Beck’s Hybrids;  
Fern Anuenue Holland – Hawaii Alliance for Progressive Action (HAPA); and  
Clayton Kubo - Private Citizen.

Two individuals provided oral testimony.

Ms. Fern Anuenue Holland presented oral and written testimony. In addressing the Pesticide Rules revisions Ms. Holland expressed concern associated with the definition for “runoff” as it appeared in the rules. An expanded definition of “runoff” was proposed to include the language that runoff is “*water that directly or eventually enters into lakes, rivers, wetlands, coastal waters, other surface waters, and ground waters.*” Ms. Holland suggested additional language for the definitions of “drift” and “Restricted Use Pesticides”. Ms. Holland expressed her concern, and the concern of the groups she represented, regarding language associated with the Evaluation of Pesticide Uses (4-66-32.1(b)(3), HAR) as well as perceived exemptions of Experimental Use Permits (4-66-47, HAR) for mixtures of pesticides.

Concerns were expressed over the small size of the 100-ft buffer zones around schools; the safety of experimental pesticides and mixtures of pesticides; and the deletion of large tracts of text associated with updating Hawaii law, especially as related to certified applicators. There were extensive, detailed, additional suggestions and concerns that were outside of the scope of the public hearing process and not responsive to the identified purpose of the public hearing.

Mr. Clayton Kubo presented oral testimony regarding his background and experience with pesticide use on the island of Kauai. Mr. Kubo suggested that the buffer zones around schools be increased from 100 ft. to 500 ft. and that an olfactory agent in pesticide tank mixes be required that would help the public determine if a pesticide was being sprayed.

**Hilo** – Two employees of HDOA were present:

Hearings Officer John McHugh – HDOA Pesticides Branch; and  
Victoria Matsumura – HDOA Pesticides Branch.

One member of the public was present:

Steve Russo – Terminix.

One individual provided oral testimony:

Mr. Steve Russo from Terminix stated that the requirement to report all RUP use by TMK was onerous and would prefer street addresses, which is data that is already collected.

Mr. Russo expressed concern that the 30 day submission requirement for department approval of continuing education credits was excessive and that a 14 day deadline was more realistic. Mr. Russo was also concerned that the rules do not define agricultural operations and expressed some confusion over the RUP reporting requirements when servicing an agricultural operation as his company often does for commodity fumigation.

**Kailua-Kona** – Two employees of HDOA were present:

Hearings Officer John McHugh – HDOA Pesticides Branch; and  
Victoria Matsumura – HDOA Pesticides Branch.

One member of the public was present:

Teresa Tico – Attorney, movie producer.

One individual provided oral testimony:

Ms. Teresa Tico was concerned that the fines, suspensions, and penalties listed in Appendix A were not strict enough and she would like to see employers of certified applicators be held responsible for any violations involving pesticide use/misuse. Need to have regulations with teeth. Ms. Tico agreed with the written testimony submitted by Fern Holland. Other testimony was offered but it was not responsive to the identified purpose of the public hearing.

**Molokai** – Two employees of HDOA were present:

Hearings Officer John McHugh – HDOA Pesticides Branch; and  
Victoria Matsumura – HDOA Pesticides Branch.

Four members of the public were present:

John Wordin – Hawaii Bee Keepers;  
Artice Swingle – HDRC;  
Cheryl Pritchard – Private Citizen; and  
Ken Bare – Private Citizen.

Four individuals provided oral testimony:

Ms. Artice Swingle testified that she would like to see the penalties for the employers of the applicators of pesticides applied to include businesses, organizations, and agencies. Other testimony was offered but it was not responsive to the identified purpose of the public hearing.

Mr. Ken Bare testified that he would like fertilizer regulated like pesticides because of perceived consequences to the ocean and reefs. Mr. Bare expressed his desire to have enhanced regulation of the use of rodenticides because of his concerns related to bioaccumulation associated with predation of rats and mites by pueo [Hawaiian owls]. Other testimony was offered but it was not responsive to the identified purpose of the public hearing.

Ms. Cheryl Pritchard expressed concern over consumption of stolen Bt corn, exposure to atrazine, and the proliferation of asthma in the community, which Ms. Pritchard

attributed to the GMO seed corn production on the island. Other testimony was offered but it was similarly not responsive to the identified purpose of the public hearing.

Mr. John Wordin highlighted bee sensitivity to pesticides and suggested a ban on neonicotinoid insecticides. Other testimony was offered but it was not responsive to the identified purpose of the public hearing.

## B. WRITTEN TESTIMONY

Twenty-one individuals submitted written testimony to the HDOA by email, fax, U.S. Postal Service, or hand delivery prior to the close of business, 4:30 pm, on Thursday, November 8, 2018. Copies of the written testimonies are provided as submitted in the appendix to this report.

The written testimony is summarized below.

Fern Anuenue Holland on behalf of the Protect Our Keiki Coalition, HAPA, the Center for Food Safety, Hawaii SEED, GMO Free Kauai, Babes Against Biotech, Sustainable Action Fund for the Environment, and/or Pesticide Action Network. Julia Funaro, Elif Cuceloglu Beall, Robert McHenry, Marion McHenry, Lanny Sinkin, Marghee Maupin, Shannon Rudolph, and Jennifer P. identified themselves as being associated with Fern Anuenue Holland and submitted essentially identical written testimony.

Written testimony cumulatively provided by the nine individuals included:

1. A suggestion to revise and expand the definition of “*runoff*.”
2. A suggestion to revise and expand the definition of “*drift*.”
3. A suggestion to revise and expand the language used in section 4-66-32(b)(3) regarding Restricted Use Pesticides.
4. Concern that the amendment to section 4-66-32(d) regarding Restricted Use Pesticides, seeks to prevent the head of HDOA from consulting with the Pesticide Advisory Committee, and lacks public transparency.
5. A suggestion to revise and expand the language used in section 4-66-32.1(b)(3) regarding Evaluation of Pesticides.
6. Opposed the exemption provided under section 4-66-47 regarding Experimental Use Permits that allow pesticide mixtures.
7. Supports the inclusion of mandatory pesticides buffer zones within the rules but suggests expansion of the 100-foot buffer zones required by Act 45.
8. Concern that the penalties and fines detailed in Appendix A of the Enforcement section, 4-66-66.1 are relatively low.
9. Concern over mixtures of pesticides and the potential enhanced toxicity associated with those mixtures.
10. Concern over drift of pesticide mixes into the surrounding communities.

Susan Wiener provided two written submissions that opposed the removal of RUPs from rules and opposed maintaining the RUPs as a separate list external to the rules.

Toni Liljengren provided comments that were not responsive to the identified purpose of the public hearing.

Dennis Mendonca does not believe changing sections 4-66-4 and 4-66-14 is in the public interest. Further testimony was not responsive to the identified purpose of the public hearing.

Caroline Miura does not want the pesticide rules amended.

Written testimony submitted by James Saulez on behalf of Anne Vaccaro expressed concern that the language in the rules does not reflect the language in Act 45 and suggested that Act 45 be interpreted as requiring two separate RUP reports, one for HDOA use and one for public disclosure.

aameden@hawaii.rr.com submitted comments that were not responsive to the identified purpose of the public hearing.

Robert Boesch provided interesting background information regarding several aspects of pesticide regulation including recommendations for regulation of brodifacoum, chlorine gas, and chloropicrin. Also suggested administrative procedures for State proposed RUPs and Annual Use Permits.

Written testimony submitted by Stephanie Ann Binns on behalf of Aaron Hobbs, representing Responsible Industry for a Sound Environment (RISE):

1. Expressed concern on the impact of increasing licensing fees but acknowledged the increased fees would provide revenue to support training, education, product registration, and other important pesticide related programs.
2. Questioned how the Experimental Use Permits written notification requirement under section 4-66-47 will impact confidential business information (CBI).
3. Opposes requirement of including TMK information for RUP reporting.
4. Concerned that the definition of "school" in section 4-66-64.1 is too broad.

Jeff Jensen on behalf of Golf Course Superintendents Association of America (GCSAA):

Echoes the sentiments provided by Anne Vaccaro about the language in the rules not reflecting the language in Act 45 and suggested that Act 45 be interpreted as requiring two separate RUP reports, one for HDOA use and one for public disclosure.

Written testimony submitted by Emmanuel Zibakalam on behalf of Bennette Misalucha, representing the Hawaii Crop Improvement Association (HCIA):

Echoes the sentiments provided by Anne Vaccaro and Aaron Hobbs about the language in the rules not reflecting the language in Act 45 and suggested that Act 45 be interpreted as requiring two separate RUP reports, one for HDOA use and

one for public disclosure. Concern was also expressed over the privacy and safety of employees who may be named in the RUP reports.

Written testimony submitted by Ryan Tagomori on behalf of Janet Collins, representing CropLife America:

1. Suggested that the rules should be based on the principles of sound science.
2. Concern over the protection of CBI. Wants safeguards established to protect CBI when that information is reported to conform to rule requirements.
3. Suggested that removing the RUP list from the rules may not provide sufficient opportunity for stakeholder comments.
4. Suggested the HDOA internal review process of RUP candidates be made part of the rules.
5. Questioned if section 4-66-54 regarding retail signage requirements addressing the proper handling, storage, and disposal of all pesticides sold is even feasible. Concern over how sufficiency of information provided will be determined.
6. Questioned enhanced standards for certification of RUP applicators in 4-66-58.
7. Concern over conflicting and confusing RUP reporting in section 4-66-62 especially as relates to the form that will be provided by the Head and the confusing referral to section 4-66-62(c) in section 4-66-62 (i).
8. Concern about process for designation of a product for the Annual Use Permit as presented in section 4-66-63.1.
9. Concern about the appropriateness of the levels and amounts of the penalties contained in Appendix A.

Written testimony submitted by Sean O'Keefe on behalf of Darren Strand, representing Alexander and Baldwin:

1. Supports removal of RUP list from the rules.
2. Concern with the RUP reporting requirements associated with 4-66-62 and Act 45. Language of the rules does not reflect the language of Act 45. Corrective language was proposed. Concern over the protection of CBI. Wants safeguards established to protect CBI.

The Hawaii Farm Bureau Federation<sup>1</sup> submitted written testimony:

1. Believed that the amendments made to section 4-66-62 meant to implement Act 45 should not depart from the law.
2. Concern over the determination of buffer zones around schools and lack of access to information that would assist with making a determination of where the 100-foot buffer zone was located for purposes of applying RUPs.

---

<sup>1</sup> The written testimony submitted by the Hawaii Farm Bureau Federation was authored by Randy Cabral, a current member of the Hawaii Board of Agriculture who will be called upon to approve or disapprove the Hearings Officer's recommendations and the proposed rule amendments. This Hearings Officer has disregarded this written testimony to avoid the appearance of a conflict of interest.

3. Opposed to the inclusion of “*possess a history of honesty, truthfulness, financial integrity and fair dealing*” as a certification standard in section 4-66-57.
4. Concern over protection of CBI under section 4-66-47, Experimental Use Permits, as pertains to written notification to HDOA on “forms prescribed by the head.”

### **III. Analysis and Response to Public Testimony and Comments**

The Hearings Officer provides the following comments to issues raised during the public hearings:

Many of the comments received did not directly address the content of the proposed amended rules. As the comments were reviewed it was clear that there was some misunderstanding regarding the purpose of the public hearings process. It was also clear that many of the submitters were under the impression that quantity of testimony submitted, regardless of originality, would have more weight in determining the final outcome of the proposed rule amendments. The public hearing process thrives on original comments that would help HDOA craft rules that are cognizant of the many uses of pesticides in the world that we live in, including those that are not necessarily applied in agriculture.

As the testimonies were reviewed it was also clear there was a misunderstanding in the regulated community about how HDOA promulgates rules for pesticide regulation. The proposed amendment to the pesticide rules have been under consideration for over 3 years. During that time HDOA has continually sought input from all stakeholders, including the United States Environmental Protection Agency (EPA), United States Department of Agriculture, pesticide applicators, retailers, agricultural operators, structural pest control industry, pesticide manufacturers, members of the scientific community, and the public. HDOA works closely with the Attorney General’s office to assure that the rules have legal authority. The Pesticide Advisory Committee, established by section 149A-51, HRS, assisted HDOA with pesticide rule amendments by providing written comments upon request, and at publicly noticed meetings held on January 16, 2015, June 13, 2017, and September 6, 2018. Additionally, the proposed rules were before the Hawaii Board of Agriculture on November 24, 2015, March 14, 2017, April 25, 2017, January 23, 2018, February 27, 2018, July 24, 2018, and September 25, 2018. The Hawaii Board of Agriculture meetings were also publicly noticed and provided an additional opportunity for public input to the rule amendment process.

A number of issues were identified during the public hearing process. Each issue relevant to the proposed rule amendments will be addressed below.

**ISSUE (1): The requirements and impact of 2018 Haw. Sess. Laws Act 045, section 1 at 142-143.**

Testimony regarding Act 045 included the additional burden, in terms of time and cost, for annually reporting RUP use; reporting location by Tax Map Key was seen as unnecessary; reporting by address was more accurate; address information was already collected; the language from Act 045 was not reflected in the rules; the definition of “school” is too broad; and public disclosure of information collected through section 4-66-62, HAR, may allow competitors to take advantage of confidential business information.

**RESPONSE:** Act 045 defines “school” as “any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school.” HDOA is unable to amend a statutory definition by rule. Only the Hawaii legislature can expand the definition.

Likewise, the collection of geographic location where restricted use pesticides are applied, by “including, at a minimum, the tax map key number,” is a statutory requirement of Act 045 that may not be amended by rule. Only the Hawaii legislature can change the reporting requirements.

HDOA sought to address the extra reporting burdens caused by Act 045 by adding one item to the records already kept by RUP applicators pursuant to section 4-66-62, HAR (2006). Act 045 requires RUP applicators to annually report to HDOA:

- the federal and state registrations or permit numbers of RUP products applied;
- commercial product names;
- active ingredients;
- total quantify of each RUP used;
- general description of the geographic location where RUP’s were used, including, at a minimum, the tax map key number; and
- date RUP application occurred.

Pursuant to section 4-66-62, HAR (2006), certified pesticide applicators have been required to keep records regarding RUP applications and to make these records available to HDOA for inspection. The records required to be maintained include:

- brand or common name of pesticide product applied;
- EPA registration number;
- type of formulation;
- per cent active ingredient’
- name of target pest;
- dilution rate;
- total amount of pesticide used;
- total area covered;
- time and date of application;
- address or location of treated site;
- name of certified applicator and certification number;

- restricted entry interval and notification requirement; and
- any other information the head deems necessary.

The information collected pursuant to section 4-66-62, HAR (2006) is also required to be recorded by federal regulation. See 40 CFR section 171-201. HDOA has collected copies of these records for years as part of its record keeping inspections.

To aid in gathering the information required by section 4-66-62, HAR (2006), Act 045, and federal regulation, and to ease the recordkeeping burden caused by Act 045, HDOA merely added one additional requirement established by the Hawaii Legislature through Act 045, “a general description of the geographic location including, at a minimum, the tax map key number, at which the restricted use pesticides were used.”

From the information collected under section 4-66-62, HAR (2018), HDOA will “produce a summary, for public disclosure, by county, that includes” for each RUP:

- the total quantities used;
- by federal and state registrations or permit numbers;
- the commercial product names;
- active ingredients; and
- amount of area in the county in which the restricted use application occurred.

HDOA is required to produce the summary by statute. HDOA will be able to comply with Act 045 public reporting requirements by adding the one item not previously required under section 4-66-62, HAR (2006) (Tax Map Key information), and asking certified applicators to send that information to HDOA annually, rather than HDOA collecting the information during inspections.

The decision on how to collect pesticide application information is the purview of HDOA. HRS section 149A-33(4) gives HDOA the authority to “establish as necessary, record keeping requirements for pesticide use by applicators[.]” The recordkeeping requirements established by the rules aid HDOA’s regulatory function and comports with federal requirements.

It appears that protection of CBI is the real concern. As noted, HDOA does collect copies of the records maintained under section 4-66-62, HAR (2006). This information has been made available to the public via a Uniform Information Practices Act (UIPA) request. Any information HDOA believes to be CBI is redacted before release to the public. HDOA is and will continue to be mindful of CBI.

**RECOMMENDATION:** To alleviate concern that HDOA would publicly disclose CBI, this Hearings Officer recommends that a mechanism be developed by which CBI can be identified by the applicator as confidential and not subject to disclosure. Forms “prescribed by the head” to be used in collection of information that potentially contains CBI, could be designed to allow the applicator to designate information as CBI that may not be released without written permission. For example, the following declaration

could be added to HDOA forms: “Applicant declares that the information provided in paragraph(s) \_\_\_\_\_ is confidential business information that may not be released without the Applicant’s express written permission.”

**RECOMMENDATION:** This Hearings Officer recommends that section 4-66-62(d), HAR, as currently proposed:

(d) Every user of restricted use pesticides shall submit to the department, for departmental use, no later than January 30<sup>th</sup> of the following year, all restricted use application records for the preceding calendar year on forms prescribed by the head.

Be replaced with:

(d) Every user of restricted use pesticides shall submit to the department, for departmental use, no later than January 30<sup>th</sup> of the following year, all restricted use application records required to be maintained in subsection (c) for the preceding calendar year on forms prescribed by the head. The forms shall allow information collected from the user of restricted use pesticides pursuant to subsection (c) to be designated as confidential business information.

**ISSUE (2): Definitions.**

Testimony was offered that suggested changes to the definitions of “runoff” and “drift”, and the restricted use pesticide evaluation criteria in section 4-66-32(b)(3). The absence of a definition for “agricultural operation” was also mentioned.

**RESPONSE:** The request to revise the definition of “runoff” has merit. The request to revise the definition of “drift” does not improve upon the EPA definition proposed for adoption. The request to revise section 4-66-32(b)(3) regarding State *Restricted Use Pesticides* candidate criteria was previously considered by the Pesticide Advisory Committee and rejected as exceeding HDOA’s statutory authority. The term “agricultural operation” is self-explanatory.

**RECOMMENDATION:** The definition of “runoff” as currently proposed:

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

Be replaced with:

“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.

ISSUE (3): Buffer zones.

Testimony was received that the buffer zones around schools established by Act 045 were insufficient.

RESPONSE: HDOA is unable to amend the statutorily prescribed 100-foot buffer zone by rule. Only the Hawaii legislature can expand the size of the buffer zones.

ISSUE (4): Penalties.

Testimony was received suggesting that the sanctions provided for violation of the pesticide statutes and rules were either too severe, or not severe enough. It was also suggested that employers of certified applicators be held responsible for violations involving pesticide use/misuse.

RESPONSE: All penalties and fines included in the Enforcement Action and Penalty Assessment Schedule are prescribed by statute. Only the Hawaii legislature can change the penalties. Employers are already subject to liability along with the employee pursuant to section 149A-41(d).

ISSUE (5): Adoption of federal standards.

Testimony was received that expressed concern over the deletion of large tracts of text and suggested that the adoption of federal standards weakened HDOA enforcement capabilities.

RESPONSE: Pesticide regulation falls under federal jurisdiction. The State has been given the authority by EPA to regulate pesticide registration and use. The amendments made to the pesticide rules related to labeling, certification standards, and worker protection were the result of changes to EPA regulations under 40 CFR part 156, 40 CFR part 170, and 40 CFR part 171. HDOA is required to work within the parameters established by EPA. In regards to labeling, pursuant to 7 USC section 136v (b), states "shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." Adopting federal standards acknowledges federal authority over pesticides.

ISSUE (6): Mixing of pesticide products.

Testimony was received suggesting that HDOA prevent RUP applicators from mixing pesticides.

RESPONSE: EPA, not HDOA, has the authority to prohibit mixtures of pesticides. In cases where toxicity is known to be increased to hazardous levels by mixing of pesticides the EPA approved label carries an advisement prohibiting the mixture. EPA is responsible for determining what constitutes a hazardous pesticide mixture and labeling the product accordingly.

ISSUE (7): Consultation with the pesticide advisory committee.

Testimony was received expressing concern about removing the ability of the HDOA Head to confer with the pesticide advisory committee.

RESPONSE: Section 4-66-32(d) does not prevent the head of HDOA, or more accurately the administrative head of the division of plant industry of HDOA, from consulting with the Pesticide Advisory Committee. In fact, the Chair of the Hawaii Board of Agriculture, or his designated representative, chairs the Pesticide Advisory Committee.

ISSUE (8): Continuing education credit approval.

Testimony was received expressing concern about increasing the application period for approval of education credits from 14 days prior to the scheduled class date, to 30 days prior to the scheduled class date.

RESPONSE: The decision to increase the time period for approval of education credit was done in consideration of limited pesticide branch staff and increased workloads. A provision was added to the fee schedule that will allow HDOA to charge a fee of up to \$100 to expedite approval of provider offered continuing education classes. Encouraging advance planning and preparation for providers of education classes will lessen the time commitment by HDOA staff. Last minute training opportunities may still be submitted for approval, but at a cost. The amount of the fee is left to the discretion of HDOA. The fee can be waived if the approval process does not interfere with staff responsibilities.

ISSUE (9): Removing the RUP list from the rules and including the internal review process in the rules.

The majority of testimony favored maintaining the State RUP list external from the rules, in acknowledgement of the time and expense involved in requiring a rule change to amend the list. However, some testimony was received that expressed concern that by removing the State RUP list from the rules, and maintaining the list external to the rules, the public will not be provided with sufficient opportunities to comment on additions or deletions of restricted use pesticide products. It was also suggested that the internal review process of RUP candidates be made a part of the rules.

RESPONSE: Pesticides designated by EPA as restricted use are required to receive identical treatment by HDOA. Pesticides that are classified as general use pesticides by EPA may be designated as a state restricted use pesticide product when HDOA finds science based evidence that the product may harm Hawaii's environment. The pesticide advisory committee reviews all pesticide products proposed for state restricted use. These meetings are noticed and the public are encouraged to attend. The Hawaii Board of Agriculture will make the final decision on whether the pesticide product will be listed as a state restricted use product before sales may commence. The Board meetings are also noticed and the public is encouraged to attend. It appears that the volume of products considered for State restricted use has been overestimated. Since 2006, less than 10 pesticide products have been proposed for addition to the list. The public's ability to provide comments on the adoption of proposed state restricted use pesticides is commensurate with the quantity of products under review. The suggestion that the internal review process be made a part of the rules suffers from the same problem caused by maintaining the RUP list in the rules. Scientific developments and investigative improvements would be held in abeyance until the rules could be amended.

ISSUE (10): Increase in licensing fees.

Testimony was received that expressed concern about the increase in licensing fees.

RESPONSE: The Small Business Regulatory Review Board reviewed the proposed fee increase and found it to be in-line with fees charged by other states. As the testifier noted the increased fees will enhance the pesticide branch's ability to serve the pesticide community through training, education, increased services, and establish new programs such as disposal of unwanted or unused pesticides. In consideration of the time that has elapsed since the last increase, and the anticipated length of time before the next rule amendment, the increased fees are not excessive.

ISSUE (11): Retail warning sign requirements.

Testimony was received that expressed concern about whether the proposed retailer pesticide warning sign requirements were feasible.

RESPONSE: The retail signage requirements are the result of legislative directive and have been the law since 2007. See section 149A-15.5, HRS. HDOA cannot amend the statute by rule. Only the Hawaii legislature can change the retail signage requirements.

ISSUE (12): Certified applicator qualification standards.

Testimony was received that expressed concern about HDOA's ability to determine if a candidate for certification as a restricted use pesticide applicator possessed "a history of honesty, truthfulness, financial integrity, and fair dealing."

**RESPONSE:** This requirement comes directly from the pest control operators licensing requirements under HRS §460J-8 (2). Inclusion of this qualification was viewed as a way of raising professional standards, and combating the current public perception that pesticide applicators are less than trustworthy. HDOA accepts an individual's declaration of good character on the application/renewal. Only when information comes to the attention of HDOA would the matter be placed before the Hawaii Board of Agriculture for consideration. This requirement is a tool that will allow HDOA to revoke a certification if information is discovered that negatively impacts an individual's honesty and integrity. HRS section 149A-34 provides that a hearing must be held before a certification can be revoked. The hearing would be before the Board. It would be up to the Board to determine if the information warrants a finding that the applicant/certified applicator exhibited dishonesty, untruthfulness, unfair practices, and/or is lacking financial integrity. For example, HDOA enters into a settlement agreement with a certified applicator who agrees to pay a reduced fine by a date certain, but no payment is received. At the hearing before the Board to revoke the RUP applicator's certification, the signed consent agreement is presented to the Board and staff can attest that no payment was received. The RUP applicator can rebut the assertion of non-payment. The Board decides whether the failure to pay an agreed upon settlement demonstrates a lack of honesty, truthfulness, financial integrity, and/or fair dealing.

**RECOMMENDATION:** The language in section 4-66-57(a), HAR as currently proposed:

(a) Applicants for certification shall be at least ~~[18]~~ eighteen years ~~[old]~~ of age and shall possess a history of honesty, truthfulness, financial integrity and fair dealing;

*Be replaced with:*

(a) Applicants for certification shall be at least ~~[18]~~ eighteen years ~~[old]~~ of age and shall possess a history of honesty, truthfulness, financial integrity and fair dealing. Such personal history shall be based on information obtained intra-departmentally, inter-departmentally, and/or through publicly available records;

#### **IV. Hearings Officer's Recommendations**

The oral and written testimony provided during the public hearings process was obviously passionate and heart felt, although at times the opinions expressed were not relevant to the subject matter at issue. None-the-less, all testimony was reviewed and given serious consideration, except where noted. It is the recommendation of the Hearings Officer that the Hawaii Board of Agriculture adopt the proposed rule amendments as presented, except as recommended above, namely:

Forms "prescribed by the head" should be designed to allow the applicator to designate information as CBI that may not be released without written permission.

Section 4-66-62(d), HAR, be amended to read as follows:

(d) Every user of restricted use pesticides shall submit to the department, for departmental use, no later than January 30th of the following year, all restricted use application records required to be maintained in subsection (c) for the preceding calendar year on forms prescribed by the head. The forms shall allow information collected from the user of restricted use pesticides pursuant to subsection (c) to be designated as confidential business information.

Section 4-66-2, HAR, be amended to read as follows:

“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.

Section 4-66-57(a), HAR, be amended to read as follows:

(a) Applicants for certification shall be at least ~~[18]~~ eighteen years ~~[old]~~ of age and shall possess a history of honesty, truthfulness, financial integrity and fair dealing. Such personal history shall be based on information obtained intra-departmentally, inter-departmentally, and/or through publicly available records;

Thank you for the opportunity to participate in this public hearing process.

---

JOHN MCHUGH  
Pesticides Branch Manager  
Public Hearings Officer

**APPENDIX**

**Written Testimonies for Amended Pesticide Rules**

# Protect Our Keiki Coalition – Standing Together For The Future of Hawai'i

November 2nd 2018

## RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18)

Aloha Department of Agriculture Board Members,

On behalf of the Protect Our Keiki Coalition, including: Hawai'i Alliance for Progressive Action (HAPA), the Center for Food Safety (CFS), Hawai'i SEED, GMO Free Kaua'i, Babes Against Biotech, Sustainable Action Fund for the Environment (SAFE), Pesticide Action Network (PAN) and our tens of thousands of members, we submit the following comments on proposed changes to Chapter 4-66, Hawaii Administrative Rules for Pesticides.

### Section 4-66-2 – Definitions

1. We kindly request that you revise the definition of "runoff" to include water **"that directly or eventually enters into lakes, rivers, wetlands, coastal waters, other surface waters, and ground waters."**

The inclusion of the above language is more consistent with the federal definition of runoff from both point sources and nonpoint sources under the US Clean Water Act. Polluted runoff relating to nonpoint source pollution is clearly described by the EPA as "pollution caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters."<sup>1</sup>

We strongly support the expansion of the definition of runoff as it is critical the definition includes runoff that flows not just over land or impervious surfaces, but also directly into bodies of surface water or ground waters.

2. Furthermore within this section, the definition of "drift" should also be appropriately explained to mean the airborne movement of chemical(s) (alone or bound to moving particles) for the duration of 5 environmental half-lives (in which time toxicity has broken down and nearly eliminated).<sup>2</sup>

### Section 4-66-32(b)(3) – Restricted Use Pesticides

3. We recommend that the Restricted Use Pesticides (RUPs) sections be amended by adding the additional language underlined in bold:

"pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non-target organisms, **or significant reduction** or fatality to **state and federally listed threatened, and** endangered species **due to both direct and indirect effects from the pesticides or pesticides uses on such species, or their designated critical habitats.**"



HAWAII  
CENTER FOR  
FOOD SAFETY

## *Protect Our Keiki Coalition – Standing Together For The Future of Hawai'i*

4. Furthermore, relating to Restricted Use Pesticides, we oppose the amendment to abolish the head of the Department of Agriculture from consulting the Pesticide Advisory Committee under section 4-66-32(d). We believe that the proposed process for reviewing and classifying restricted use pesticides does not adequately account for the views of the Pesticide Advisory Committee, which we value as an important component of the safe and fair evaluation of toxins in our community.

The proposed process would lack public transparency and does not allow for critical public input. The process would create an internal review process that does not take public comments into account until it is put forth before the Board of Agriculture. We strongly believe that public input is a critical part of decision-making.

We understand that efficiency requires that there be a public comment period during the determination by the Department of Agriculture, and recommends that subsection (e) be amended to allow this.

Alternatively, this subsection could be amended to require that the head submit the list of proposed Restricted Use Pesticides to the Board for adoption, and also submit and publish its internal review findings to the Board for public comment. The public should have an opportunity to comment on pesticides which have been proposed for adoption as a Restricted Use Pesticide and those that the Department specifically will not classify as a Restricted Use Pesticide.

The current proposed amendments to the rules do not specify what the public will be allowed to comment on prior to the Board's review. Moreover, currently, the turnaround for public comment on Board agenda items is very short. We request that the Proposed Amendments clarify that the public will have an opportunity to comment on the Department's internal reviews (including those that the Department chose not to propose for restricted use pesticide classification), and that at minimum, a 60-day advance notice be required to allow for meaningful public participation in a 30-day public comment period.

### *Section 4-66-32.1(b)(3) – Evaluation of Pesticide Uses*

5. We recommend that this section be amended with the following additional language underlined in bold:

Pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non target organisms, or significant reductions in non-target organisms, **or significant reduction or fatality to state and federally listed threatened and endangered species, due to both direct and indirect effects from the pesticides or pesticide uses on such species or their designated critical habitats.**

We believe it to be of utmost importance that the language clearly identifies listed threatened species, both state and federal and is expanded to include their critical habitats.



HAWAII  
CENTER FOR  
FOOD SAFETY

## Protect Our Keiki Coalition – Standing Together For The Future of Hawai'i

### Section 4-66-47 Experimental Use Permits

6. We oppose the exemption of experimental use permits for mixtures of pesticides under the conditions outlined, because we strongly believe that no pesticides should be excluded from any rules outlined in 4-66. All pesticides and pesticide mixtures regardless of use, should be subject to the rules, recordkeeping, and permitting requirements.

### Section 4-66-64.2 – Buffer Zones

7. We applaud the State of Hawai'i for taking steps toward establishing buffer zones around schools, indicating some progress toward a more comprehensive pesticide management plan. However, we believe the distance of 100 feet to be woefully inadequate, the size of which was determined arbitrarily without scientific regard for sufficient safety measures to protect children, parents, and Department of Education staff from pesticide drift.<sup>3</sup> Spray trucks release large amounts of Restricted Use Pesticides, which are picked up by particles in the wind and dispersed into the surrounding environment much farther than 100 feet.<sup>4</sup>

In California, buffer zones around schools which prohibit the application of agricultural pesticides are 1,320 feet, a quarter of a mile. This distance is also considered by the EPA when investigating pesticide drift. It is clearly understood that the likelihood of exposure to pesticide drift increases as the distance from application decreases, and that pesticides drift even farther than one-quarter mile.<sup>4</sup> In addition to acute poisoning, the long-term health effects of pesticide exposure show up at distances far beyond one-quarter mile. In island settings with sometimes limited space, this should also indicate an urgent need to reduce the pesticide exposure load.<sup>5,6,7,8</sup> For the above listed reasons, we strongly believe that Hawai'i buffer zones around schools must be meaningfully increased in size to better protect our keiki.

The deficient distance between the spray and the children at risk, coupled with limited hours is not sufficient to protect them from exposure to pesticide drift, especially in cases of heavy volatilization. Please consider that many schools are utilized after hours by children for after school programs, sports, weekend and night classes, and community events for example.<sup>9</sup> Please also consider the multitudes of evidence increasing medical concern and demonstrating harm to children's health from chronic, low-level exposure to pesticides,<sup>4</sup> many of which are persistent and outlast the initial application window by remaining and accumulating in the exposed environment.<sup>2</sup>  
<sup>10</sup> Eliminating the use of Restricted Use Pesticides between 7:00 a.m. and 4:00 p.m. on school days is a start, but the coalition strongly believes that these buffer zones should be significantly larger and permanent.

8. We very strongly support the inclusion of mandatory pesticide buffer zones protecting all communities and sensitive areas. It is critically important that the amendments include imposing mandatory green screens and reasonable buffer zones around areas where pesticides are being applied. These are simple, workable measures that protect public health and the environment and have been repeatedly requested by communities affected by high levels of pesticide exposure. We respectfully request that the Department work to include an outline of appropriate buffer zones which buffer non-target impacts, reduce drift overall and decrease pesticide-laden runoff.



## Protect Our Keiki Coalition – Standing Together For The Future of Hawai'i

### Section 4-66-66.1 Appendix A - Enforcement

We believe that the company employing and directing the applicator should also be held responsible for violations under the enforcement provisions. We believe the department should establish penalties for violations that occur at the direction of supervisors and the company responsible for the spraying and the legal language be adjusted to reflect this appropriately.

### Additional Testimony

9. It is imperative that our pesticide regulation reflects scientific understanding and incorporates the potential threats of combinations of chemicals. Combining chemicals can result in potentiation, alter half-lives, and completely change the properties and toxicity of a substance. Combination chemicals are experimental in nature and should not be subject to any exemptions or loopholes that allow them to not be treated as such.

10. We understand that the drift of experimental pesticides and mixtures of pesticides into communities and the surrounding environment does enter into people and our resources.<sup>15</sup> These agrichemical experiments are therefore impacting the adjacent community and we believe are therefore unethical.<sup>11</sup>

The combinations of pesticides used have not been tested or appropriately regulated, and expose the public to experimental chemical combinations. We find this to be a disturbing failure to gain informed consent from surrounding communities. Without consent or containment, we believe the State of Hawai'i allowance of some pesticide applications violates the principles of critical and historic human rights guidelines such as the Nuremberg Code.<sup>12</sup>

We understand that the Nuremberg Code includes a guideline, which insist that those conducting experiments obtain informed consent prior to conducting human experimentation. Along with the Declaration of Helsinki, the Nuremberg Code forms the basis for Article 7 of the United Nations International Covenant on Civil and Political Rights which states, **"In particular, no one shall be subjected without his free consent to medical or scientific experimentation."**

Furthermore, following the discovery that a chemical released over a dozen U.S. communities in some cases spread hundred of miles over a few days, the U.S. Congress (in 1994) deemed this type of activity as 'unethical human experimentation.' The regulatory agencies (Including the FDA and EPA) promised to uphold the Common Rule so that these kinds of activities would not be repeated without individual informed consent of all those exposed.



HAWAII  
CENTER FOR  
FOOD SAFETY

***Protect Our Keiki Coalition – Standing Together For The Future of Hawai'i***

Should the board have additional questions or need additional information or resources from the coalition please contact Fern Anuenue Holland, Program Associate for HAPA.

Thank you for considering our comments and doing your best to ensure these rules efficiently protect people and the environment from the harmful impacts of pesticides.

Sincerely,

**The Protect Our Keiki Coalition**



## *Protect Our Keiki Coalition – Standing Together For The Future of Hawai'i*

### References:

1. <https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution>
2. <http://npic.orst.edu/factsheets/half-life.html>
3. <http://www.panna.org/resources/publication-report/report-generation-jeopardy>
4. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1480526/>
5. <https://www.ncbi.nlm.nih.gov/pubmed/16873458>
6. <https://www.ncbi.nlm.nih.gov/pubmed/20019898>
7. <https://factor.niehs.nih.gov/2011/november/science-pesticide/index.cfm>
8. <https://ehp.niehs.nih.gov/doi/10.1289/ehp.951031126>
9. <https://www.ncbi.nlm.nih.gov/pubmed/16736054>
10. <http://cehtp.org/download/pesticides/pesticides-schools-exec-summary>
11. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1242022/>
12. <https://ori.hhs.gov/chapter-3-The-Protection-of-Human-Subjects-nuremberg-code-directives-human-experimentation>
13. <http://pediatrics.aappublications.org/content/130/6/e1765>
14. <https://arxiv.org/pdf/1201.4353.pdf>
15. <https://www.ncbi.nlm.nih.gov/pubmed/29127912#>
16. <https://www.pcrm.org/ethical-science/human-experimentation-an-introduction-to-the-ethical-issues>
17. <https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html>



HAWAII  
CENTER FOR  
FOOD SAFETY

## McHugh, John

---

**From:** Julia Funaro <juliafunaro@gmail.com>  
**Sent:** Monday, November 5, 2018 8:43 PM  
**To:** HDOA.PB  
**Subject:** RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18)

Aloha Department of Agriculture Board Members,

On behalf of the Protect Our Keiki Coalition, including: Hawai'i Alliance for Progressive Action (HAPA), the Center for Food Safety (CFS), Hawai'i SEED, GMO Free Kaua'i, Babes Against Biotech, Sustainable Action Fund for the Environment (SAFE), Pesticide Action Network (PAN) and our tens of thousands of members, we submit the following comments on proposed changes to Chapter 4-66, Hawaii Administrative Rules for Pesticides.

### Section 4-66-2 – Definitions

1. We kindly request that you revise the definition of "runoff" to include water "that directly or eventually enters into lakes, rivers, wetlands, coastal waters, other surface waters, and ground waters."

The inclusion of the above language is more consistent with the federal definition of runoff from both point sources and nonpoint sources under the US Clean Water Act. Polluted runoff relating to nonpoint source pollution is clearly described by the EPA as "pollution caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters."

We strongly support the expansion of the definition of runoff as it is critical the definition includes runoff that flows not just over land or impervious surfaces, but also directly into bodies of surface water or ground waters.

2. Furthermore within this section, the definition of "drift" should also be appropriately explained to mean the airborne movement of chemical(s) (alone or bound to moving particles) for the duration of 5 environmental half-lives (in which time toxicity has broken down and nearly eliminated).<sup>2</sup>Section 4-66-32(b)(3) – Restricted Use Pesticides

3. We recommend that the Restricted Use Pesticides (RUPs) sections be amended by adding the additional language underlined in bold:

"pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened, and endangered species due to both direct and indirect effects from the pesticides or pesticides uses on such species, or their designated critical habitats."

4. Furthermore, relating to Restricted Use Pesticides, we oppose the amendment to abolish the head of the Department of Agriculture from consulting the Pesticide Advisory Committee under section 4-66-32(d). We believe that the proposed process for reviewing and classifying restricted use pesticides does not adequately account for the views of the Pesticide Advisory Committee, which we value as an important component of the safe and fair evaluation of toxins in our community.

The proposed process would lack public transparency and does not allow for critical public input. The process would create an internal review process that does not take public comments into account until it is put forth before the Board of Agriculture. We strongly believe that public input is a critical part of decision-making.

We understand that efficiency requires that there be a public comment period during the determination by the Department of Agriculture, and recommends that subsection (e) be amended to allow this.

Alternatively, this subsection could be amended to require that the head submit the list of proposed Restricted Use Pesticides to the Board for adoption, and also submit and publish its internal review findings to the Board for public comment. The public should have an opportunity to comment on pesticides which have been proposed for adoption as a Restricted Use Pesticide and those that the Department specifically will not classify as a Restricted Use Pesticide.

The current proposed amendments to the rules do not specify what the public will be allow to comment on prior to the Board's review. Moreover, currently, the turnaround for public comment on Board agenda items is very short. We request that the Proposed Amendments clarify that the public will have an opportunity to comment on the Department's internal reviews (including those that the Department chose not to propose for restricted use pesticide classification), and that at minimum, a 60-day advance notice be

required to allow for meaningful public participation in a 30-day public comment period.-- Section 4-66-32.1(b)(3) – Evaluation of Pesticide Uses

5. We recommend that this section be amended with the following additional language underlined in bold:

Pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non target organisms, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened and endangered species, due to both direct and indirect effects from the pesticides or pesticide uses on such species or their designated critical habitats.

We believe it to be of utmost importance that the language clearly identifies listed threatened species, both state and federal and is expanded to include their critical habitats.

Section 4-66-47 Experimental Use Permits

6. We oppose the exemption of experimental use permits for mixtures of pesticides under the conditions outlined, because we strongly believe that no pesticides should be excluded from any rules outlined in 4-66. All pesticides and pesticide mixtures regardless of use, should be subject to the rules, record-keeping, and permitting requirements.

Section 4-66-64.2 – Buffer Zones

7. We applaud the State of Hawai'i for taking steps toward establishing buffer zones around schools, indicating some progress toward a more comprehensive pesticide management plan. However, we believe the distance of 100 feet to be woefully inadequate, the size of which was determined arbitrarily without scientific regard for sufficient safety measures to protect children, parents, and Department of Education staff from pesticide drift. Spray trucks release large amounts of Restricted Use Pesticides, which are picked up by particles in the wind and dispersed into the surrounding environment much farther than 100 feet.

In California, buffer zones around schools which prohibit the application of agricultural pesticides are 1,320 feet, a quarter of a mile. This distance is also considered by the EPA when investigating pesticide drift. It is clearly understood that the likelihood of exposure to pesticide drift increases as the distance from application decreases, and that pesticides drift even farther than one-quarter mile. In addition to acute poisoning, the long-term health effects of pesticide exposure show up at distances far beyond one-quarter mile. In island settings with sometimes limited space, this should also indicate an urgent need to reduce the pesticide exposure load.

For the above listed reasons, we strongly believe that Hawai'i buffer zones around schools must be meaningfully increased in size to better protect our keiki.

The deficient distance between the spray and the children at risk, coupled with limited hours is not sufficient to protect them from exposure to pesticide drift, especially in cases of heavy volatilization. Please consider that many schools are utilized after hours by children for after school programs, sports, weekend and night classes, and community events for example. Please also consider the multitudes of evidence increasing medical concern and demonstrating harm to children's health from chronic, low-level exposure to pesticides, many of which are persistent and outlast the initial application window by remaining and accumulating in the exposed environment. Eliminating the use of Restricted Use Pesticides between 7:00 a.m. and 4:00 p.m. on school days is a start, but the coalition strongly believes that these buffer zones should be significantly larger and permanent.

8. We very strongly support the inclusion of mandatory pesticide buffer zones protecting all communities and sensitive areas. It is critically important that the amendments include imposing mandatory green screens and reasonable buffer zones around areas where pesticides are being applied. These are simple, workable measures that protect public health and the environment and have been repeatedly requested by communities affected by high levels of pesticide exposure. We respectfully request that the Department work to include an outline of appropriate buffer zones which buffer non-target impacts, reduce drift overall and decrease pesticide-laden runoff.

Section 4-66-66.1 Appendix A - Enforcement

We believe that the company employing and directing the applicator should also be held responsible for violations under the enforcement provisions. We believe the department should establish penalties for violations that occur at the direction of supervisors and the company responsible for the spraying and the legal language be adjusted to reflect this appropriately. Additional Testimony

9. It is imperative that our pesticide regulation reflects scientific understanding and incorporates the potential threats of combinations of chemicals. Combining chemicals can result in potentiation, alter half-lives, and completely change the properties and toxicity of a substance. Combination chemicals are experimental in nature and should not be subject to any exemptions or loopholes that allow them to not be treated as such.

10. We understand that the drift of experimental pesticides and mixtures of pesticides into communities and the surrounding environment does enter into people and our resources.<sup>15</sup> These agrichemical experiments are therefore impacting the adjacent community and we believe are therefore unethical.

11. The combinations of pesticides used have not been tested or appropriately regulated, and expose the public to experimental chemical combinations. We find this to be a disturbing failure to gain informed consent from surrounding communities. Without consent or containment, we believe the State of Hawai'i allowance of some pesticide applications violates the principles of critical and historic human rights guidelines such as the Nuremberg Code.

12. We understand that the Nuremberg Code includes a guideline, which insist that those conducting experiments obtain informed consent prior to conducting human experimentation. Along with the Declaration of Helsinki, the Nuremberg Code forms the basis for Article 7 of the United Nations International Covenant on Civil and Political Rights which states, "In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Furthermore, following the discovery that a chemical released over a dozen U.S. communities in some cases spread hundred of miles over a few days, the U.S. Congress (in 1994) deemed this type of activity as 'unethical human experimentation.' The regulatory agencies (Including the FDA and EPA) promised to uphold the Common Rule so that these kinds of activities would not be repeated without individual informed consent of all those exposed.

We understand that the drift of these chemicals into the adjacent community comes without informed consent, and in many places there is severe and widespread opposition to large-scale industrial agrichemical use and exposure, and that it is therefore unethical to expose the public to experimental chemical combinations against their will.<sup>16</sup>

Even if the subject of the experiment is not intentionally the surrounding community, the people within the exposure path are still the subject of incidental human experimentation. Our natural resources and environment are also subjected to experimental chemical combinations due to the untested mixing of pesticides in which the effects from the drift of pesticides into homes, schools, and sensitive areas will impact communities differently. In the future, medical statistics from Hawai'i communities such as birth defect records and condition diagnosis records will be part of statistical assessments used to correlate the impacts of pesticide drift from research plots into surrounding populations.

We request that the rules consider a process to obtain informed consent from residents and visitors, including the combinations of pesticides and amounts proposed to be sprayed, or guarantee containment of pesticide applications to within the area to which they are applied.<sup>11</sup> Throughout the document in areas where the language is being removed and instead being deferred to federal statutes, we are concerned that this may represent a weakening to the state law and potentially protections for Hawai'i. It must be considered that the pesticide application rules established by the Environmental Protection Agency (EPA) and pesticide labels are designed for a singular growing season, such as is commonplace in the continental United States, unlike Hawai'i which has multiple growing seasons per year. Since pesticide labels do not consider the unique environment and multiple growing seasons of Hawai'i, they are therefore without sufficient assessment and instructions for use, and may be used at higher levels here without regard to the concentration of exposure in an island climate. Therefore, while "the label is the law," has been a common refrain used to oppose state and local controls over pesticide application, labels and federal pesticide guidelines do not provide adequate protection, consideration, or instructions for our climate and conditions.

Considering these matters especially, we must not rely on federal rule or label standards as the best or appropriate level of our stewardship and care of our fragile ecosystem in Hawai'i in regard to toxic agrichemicals, nor to safeguard us from effects on human health at the exposure rates our communities face based on federally accepted uses. The Hawai'i state Department of Agriculture must seek more stringent protection for our natural resources and public health in light of our current environmental and federal policy climate under this Presidential administration -- and its climate policy or lack thereof. The Trump administration is making concentrated efforts to deny climate science which includes data pointing to 24% of global emissions stemming from forestry and agriculture. The appointment of pesticide industry insiders to federal regulatory agencies and loss of major national environmental protections over the last two years means that we can no longer rely upon federal rules and regulations to protect our Hawai'i or its people.

Should the board have additional questions or need additional information or resources from the coalition please contact Fern Anuenue Holland, Program Associate for HAPA.

Thank you for considering our comments and doing your best to ensure these rules efficiently protect people and the environment from the harmful impacts of pesticides.

Sincerely,  
Julia Funaro  
5-7218 Kuhio Hwy  
Hanalei, HI 96714

Many thanks,  
Julia Funaro

*First, we dig the roots  
of the problem.*

*Aha!*

*It is there*

*We will find the seed of the solution.*

## McHugh, John

---

**From:** Elif Cuceloglu Beall <elif.beall@gmail.com>  
**Sent:** Tuesday, November 6, 2018 10:35 AM  
**To:** HDOA.PB  
**Subject:** RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18)

RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18)

Aloha Department of Agriculture Board Members,

Please see the following comments on proposed changes to Chapter 4-66, Hawaii Administrative Rules for Pesticides. These changes are necessary to better protect communities and the environment!

I concur with the testimony submitted by the Protect our Keiki Coalition:

### Section 4-66-2 – Definitions

1. We kindly request that you revise the definition of “runoff” to include water “that directly or eventually enters into lakes, rivers, wetlands, coastal waters, other surface waters, and ground waters.”

The inclusion of the above language is more consistent with the federal definition of runoff from both point sources and nonpoint sources under the US Clean Water Act. Polluted runoff relating to nonpoint source pollution is clearly described by the EPA as “pollution caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters.”

We strongly support the expansion of the definition of runoff as it is critical the definition includes runoff that flows not just over land or impervious surfaces, but also directly into bodies of surface water or ground waters.

2. Furthermore within this section, the definition of “drift” should also be appropriately explained to mean the airborne movement of chemical(s) (alone or bound to moving particles) for the duration of 5 environmental half-lives (in which time toxicity has broken down and nearly eliminated).

3. We recommend that the Restricted Use Pesticides (RUPs) sections be amended by adding the additional language underlined in bold:

“pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened, and endangered species due to both direct and indirect effects from the pesticides or pesticides uses on such species, or their designated critical habitats.”

4. Furthermore, relating to Restricted Use Pesticides, we oppose the amendment to abolish the head of the Department of Agriculture from consulting the Pesticide Advisory Committee under section 4-66-32(d). We believe that the proposed process for reviewing and classifying restricted use pesticides does not adequately account for the views of the Pesticide Advisory Committee, which we value as an important component of the safe and fair evaluation of toxins in our community.

The proposed process would lack public transparency and does not allow for critical public input. The process would create an internal review process that does not take public comments into account until it is put forth before the Board of Agriculture. We strongly believe that public input is a critical part of decision-making.

We understand that efficiency requires that there be a public comment period during the determination by the Department of Agriculture, and recommends that subsection (e) be amended to allow this.

Alternatively, this subsection could be amended to require that the head submit the list of proposed Restricted Use Pesticides to the Board for adoption, and also submit and publish its internal review findings to the Board for public comment. The public should have an opportunity to comment on pesticides which have been proposed for adoption as a Restricted Use Pesticide and those that the Department specifically will not classify as a Restricted Use Pesticide.

The current proposed amendments to the rules do not specify what the public will be allowed to comment on prior to the Board's review. Moreover, currently, the turnaround for public comment on Board agenda items is very short. We request that the Proposed Amendments clarify that the public will have an opportunity to comment on the Department's internal reviews (including those that the Department chose not to propose for restricted use pesticide classification), and that at minimum, a 60-day advance notice be required to allow for meaningful public participation in a 30-day public comment period.

5. We recommend that this section be amended with the following additional language underlined in bold: Pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non target organisms, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened and endangered species, due to both direct and indirect effects from the pesticides or pesticide uses on such species or their designated critical habitats. We believe it to be of utmost importance that the language clearly identifies listed threatened species, both state and federal and is expanded to include their critical habitats.

#### Section 4-66-47 Experimental Use Permits

6. We oppose the exemption of experimental use permits for mixtures of pesticides under the conditions outlined, because we strongly believe that no pesticides should be excluded from any rules outlined in 4-66. All pesticides and pesticide mixtures regardless of use, should be subject to the rules, record-keeping, and permitting requirements.

7. We applaud the State of Hawai'i for taking steps toward establishing buffer zones around schools, indicating some progress toward a more comprehensive pesticide management plan. However, we believe the distance of 100 feet to be woefully inadequate, the size of which was determined arbitrarily without scientific regard for sufficient safety measures to protect children, parents, and Department of Education staff from pesticide drift.<sup>3</sup> Spray trucks release large amounts of Restricted Use Pesticides, which are picked up by particles in the wind and dispersed into the surrounding environment much farther than 100 feet.

In California, buffer zones around schools which prohibit the application of agricultural pesticides are 1,320 feet, a quarter of a mile. This distance is also considered by the EPA when investigating pesticide drift. It is clearly understood that the likelihood of exposure to pesticide drift increases as the distance from application decreases, and that pesticides drift even farther than one-quarter mile.<sup>4</sup> In addition to acute poisoning, the long-term health effects of pesticide exposure show up at distances far beyond one-quarter mile. In island settings with sometimes limited space, this should also indicate an urgent need to reduce the pesticide exposure load.

8 For the above listed reasons, we strongly believe that Hawai'i buffer zones around schools must be meaningfully increased in size to better protect our keiki.

The deficient distance between the spray and the children at risk, coupled with limited hours is not sufficient to protect them from exposure to pesticide drift, especially in cases of heavy volatilization. Please consider that many schools are utilized after hours by children for after school programs, sports, weekend and night classes, and community events for example.<sup>9</sup> Please also consider the multitudes of evidence increasing medical concern and demonstrating harm to children's health from chronic, low-level exposure to pesticides,<sup>4</sup> many of which are persistent and outlast the initial application window by remaining and accumulating in the exposed environment.<sup>2, 10</sup> Eliminating the use of Restricted

Use Pesticides between 7:00 a.m. and 4:00 p.m. on school days is a start, but the coalition strongly believes that these buffer zones should be significantly larger and permanent.

8. We very strongly support the inclusion of mandatory pesticide buffer zones protecting all communities and sensitive areas. It is critically important that the amendments include imposing mandatory green screens and reasonable buffer zones around areas where pesticides are being applied. These are simple, workable measures that protect public health and the environment and have been repeatedly requested by communities affected by high levels of pesticide exposure. We respectfully request that the Department work to include an outline of appropriate buffer zones which buffer non-target impacts, reduce drift overall and decrease pesticide-laden runoff.

#### Section 4-66-66.1 Appendix A - Enforcement

We believe that the company employing and directing the applicator should also be held responsible for violations under the enforcement provisions. We believe the department should establish penalties for violations that occur at the direction of supervisors and the company responsible for the spraying and the legal language be adjusted to reflect this appropriately.

9. It is imperative that our pesticide regulation reflects scientific understanding and incorporates the potential threats of combinations of chemicals. Combining chemicals can result in potentiation, alter half-lives, and completely change the properties and toxicity of a substance. Combination chemicals are experimental in nature and should not be subject to any exemptions or loopholes that allow them to not be treated as such.

10. We understand that the drift of experimental pesticides and mixtures of pesticides into communities and the surrounding environment does enter into people and our resources. These agrichemical experiments are therefore impacting the adjacent community and we believe are therefore unethical.

The combinations of pesticides used have not been tested or appropriately regulated, and expose the public to experimental chemical combinations. We find this to be a disturbing failure to gain informed consent from surrounding communities. Without consent or containment, we believe the State of Hawai'i allowance of some pesticide applications violates the principles of critical and historic human rights guidelines such as the Nuremberg Code.

We understand that the Nuremberg Code includes a guideline, which insist that those conducting experiments obtain informed consent prior to conducting human experimentation. Along with the Declaration of Helsinki, the Nuremberg Code forms the basis for Article 7 of the United Nations International Covenant on Civil and Political Rights which states, "In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Furthermore, following the discovery that a chemical released over a dozen U.S. communities in some cases spread hundred of miles over a few days, the U.S. Congress (in 1994) deemed this type of activity as 'unethical human experimentation.' The regulatory agencies (Including the FDA and EPA) promised to uphold the Common Rule so that these kinds of activities would not be repeated without individual informed consent of all those exposed.

We understand that the drift of these chemicals into the adjacent community comes without informed consent, and in many places there is severe and widespread opposition to large-scale industrial agrichemical use and exposure, and that it is therefore unethical to expose the public to experimental chemical combinations against their will.

Even if the subject of the experiment is not intentionally the surrounding community, the people within the exposure path are still the subject of incidental human experimentation. Our natural resources and environment are also subjected to experimental chemical combinations due to the untested mixing of pesticides in which the effects from the drift of pesticides into homes, schools, and sensitive areas will impact communities differently.<sup>17</sup> In the future, medical statistics from Hawai'i communities such as birth defect records and condition diagnosis records will be part of statistical assessments used to correlate the impacts of pesticide drift from research plots into surrounding populations.

We request that the rules consider a process to obtain informed consent from residents and visitors, including the combinations of pesticides and amounts proposed to be sprayed, or guarantee containment of pesticide applications to within the area to which they are applied.

11. Throughout the document in areas where the language is being removed and instead being deferred to federal statutes, we are concerned that this may represent a weakening to the state law and potentially protections for Hawai'i. It must be considered that the pesticide application rules established by the Environmental Protection Agency (EPA) and pesticide labels are designed for a singular growing season, such as is commonplace in the continental United States, unlike Hawai'i which has multiple growing seasons per year. Since pesticide labels do not consider the unique environment and multiple growing seasons of Hawai'i, they are therefore without sufficient assessment and instructions for use, and may be used at higher levels here without regard to the concentration of exposure in an island climate. Therefore, while "the label is the law," has been a common refrain used to oppose state and local controls over pesticide application, labels and federal pesticide guidelines do not provide adequate protection, consideration, or instructions for our climate and conditions.

Considering these matters especially, we must not rely on federal rule or label standards as the best or appropriate level of our stewardship and care of our fragile ecosystem in Hawai'i in regard to toxic agrichemicals, nor to safeguard us from effects on human health at the exposure rates our communities face based on federally accepted uses. The Hawai'i state Department of Agriculture must seek more stringent protection for our natural resources and public health in light of our current environmental and federal policy climate under this Presidential administration -- and its climate policy or lack thereof. The Trump administration is making concentrated efforts to deny climate science which includes data pointing to 24% of global emissions stemming from forestry and agriculture. The appointment of pesticide industry insiders to federal regulatory agencies and loss of major national environmental protections over the last two years means that we can no longer rely upon federal rules and regulations to protect our Hawai'i or its people.

Thank you for considering my comments and doing your best to ensure these rules efficiently protect people and the environment from the harmful impacts of pesticides.

Sincerely,  
Elif Beall  
Attorney and resident of Kilauea, Kauai

## McHugh, John

---

**From:** bob-marion@hawaiiantel.net  
**Sent:** Thursday, November 8, 2018 3:22 PM  
**To:** HDOA.PB  
**Subject:** RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18)

Aloha Department of Agriculture Board members,

We strongly agree with the following testimony submitted by Fern Anuenue Holland. We hope that you will look closely at each and every point that she has made below.

### Section 4-66-2 – Definitions

1. We kindly request that you revise the definition of "runoff" to include water "that directly or eventually enters into lakes, rivers, wetlands, coastal waters, other surface waters, and ground waters." The inclusion of the above language is more consistent with the federal definition of runoff from both point sources and non-point sources under the US Clean Water Act. Polluted runoff relating to non-point source pollution is clearly described by the EPA as "pollution caused by rainfall or snow melt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters." 1 We strongly support the expansion of the definition of runoff as it is critical the definition includes runoff that flows not just over land or impervious surfaces, but also directly into bodies of surface water or ground waters.

2. Furthermore within this section, the definition of "drift" should also be appropriately explained to mean the airborne movement of chemical(s) (alone or bound to moving particles) for the duration of 5 environmental half-lives (in which time toxicity has broken down and nearly eliminated)

### Section 4-66-32(b)(3) – Restricted Use Pesticides

3. We recommend that the Restricted Use Pesticides (RUPs) sections be amended by adding the additional language underlined in bold:

"pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened, and endangered species due to both direct and indirect effects from the pesticides or pesticides uses on such species, or their designated critical habitats."

4. Furthermore, relating to Restricted Use Pesticides, we oppose the amendment to abolish the head of the Department of Agriculture from consulting the Pesticide Advisory Committee under section 4-66-32(d). We believe that the proposed process for reviewing and classifying restricted use pesticides does not adequately account for the views of the Pesticide Advisory Committee, which we value as an important component of the safe and fair evaluation of toxins in our community.

The proposed process would lack public transparency and does not allow for critical public input. The process would create an internal review process that does not take public comments into account until it is put forth before the Board of Agriculture. We strongly believe that public input is a critical part of decision-making.

We understand that efficiency requires that there be a public comment period during the determination by the Department of Agriculture, and recommends that subsection (e) be amended to allow this.

Alternatively, this subsection could be amended to require that the head submit the list of proposed Restricted Use Pesticides to the Board for adoption, and also submit and publish its internal review findings to the Board for public comment. The public should have an opportunity to comment on pesticides

which have been proposed for adoption as a Restricted Use Pesticide and those that the Department specifically will not classify as a Restricted Use Pesticide.

The current proposed amendments to the rules do not specify what the public will be allowed to comment on prior to the Board's review. Moreover, currently, the turnaround for public comment on Board agenda items is very short. We request that the Proposed Amendments clarify that the public will have an opportunity to comment on the Department's internal reviews (including those that the Department chose not to propose for restricted use pesticide classification), and that at minimum, a 60-day advance notice be required to allow for meaningful public participation in a 30-day public comment period.

#### Section 4-66-32.1(b)(3) – Evaluation of Pesticide Uses

5. We recommend that this section be amended with the following additional language underlined in bold: Pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non target organisms, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened and endangered species, due to both direct and indirect effects from the pesticides or pesticide uses on such species or their designated critical habitats.

We believe it to be of utmost importance that the language clearly identifies listed threatened species, both state and federal and is expanded to include their critical habitats.

#### Section 4-66-47 Experimental Use Permits

6. We oppose the exemption of experimental use permits for mixtures of pesticides under the conditions outlined, because we strongly believe that no pesticides should be excluded from any rules outlined in 4-66. All pesticides and pesticide mixtures regardless of use, should be subject to the rules, record-keeping, and permitting requirements.

#### Section 4-66-64.2 – Buffer Zones

7. We applaud the State of Hawai`i for taking steps toward establishing buffer zones around schools, indicating some progress toward a more comprehensive pesticide management plan. However, we believe the distance of 100 feet to be woefully inadequate, the size of which was determined arbitrarily without scientific regard for sufficient safety measures to protect children, parents, and Department of Education staff from pesticide drift.<sup>3</sup> Spray trucks release large amounts of Restricted Use Pesticides, which are picked up by particles in the wind and dispersed into the surrounding environment much farther than 100 feet.<sup>4</sup>

In California, buffer zones around schools which prohibit the application of agricultural pesticides are 1,320 feet, a quarter of a mile. This distance is also considered by the EPA when investigating pesticide drift. It is clearly understood that the likelihood of exposure to pesticide drift increases as the distance from application decreases, and that pesticides drift even farther than one-quarter mile.<sup>4</sup> In addition to acute poisoning, the long-term health effects of pesticide exposure show up at distances far beyond one-quarter mile. In island settings with sometimes limited space, this should also indicate an urgent need to reduce the pesticide exposure load.<sup>5, 6, 7,</sup>

<sup>8</sup> For the above listed reasons, we strongly believe that Hawai`i buffer zones around schools must be meaningfully increased in size to better protect our keiki.

The deficient distance between the spray and the children at risk, coupled with limited hours is not sufficient to protect them from exposure to pesticide drift, especially in cases of heavy volatilization. Please consider that many schools are utilized after hours by children for after school programs, sports, weekend and night classes, and community events for example.<sup>9</sup> Please also consider the multitudes of evidence increasing medical concern and demonstrating harm to children's health from chronic, low-level exposure to pesticides,<sup>4</sup> many of which are persistent and outlast the initial application window by remaining and accumulating in the exposed environment.<sup>2, 10</sup> Eliminating the use of Restricted Use Pesticides between 7:00 a.m. and 4:00 p.m. on school days is a start, but the coalition strongly believes that these buffer zones should be significantly larger and permanent.

8. We very strongly support the inclusion of mandatory pesticide buffer zones protecting all communities and sensitive areas. It is critically important that the amendments include imposing mandatory green screens and reasonable buffer zones around areas where pesticides are being applied. These are simple, workable measures that protect public health and the environment and have been repeatedly requested by communities affected by high levels of pesticide exposure. We respectfully request that the Department work to include an outline of appropriate buffer zones which buffer non-target impacts, reduce drift overall and decrease pesticide-laden runoff.

#### Section 4-66-66.1 Appendix A - Enforcement

We believe that the company employing and directing the applicator should also be held responsible for violations under the enforcement provisions. We believe the department should establish penalties for violations that occur at the direction of supervisors and the company responsible for the spraying and the legal language be adjusted to reflect this appropriately.

9. It is imperative that our pesticide regulation reflects scientific understanding and incorporates the potential threats of combinations of chemicals. Combining chemicals can result in potentiation, alter half-lives, and completely change the properties and toxicity of a substance. Combination chemicals are experimental in nature and should not be subject to any exemptions or loopholes that allow them to not be treated as such.

10. We understand that the drift of experimental pesticides and mixtures of pesticides into communities and the surrounding environment does enter into people and our resources.<sup>15</sup> These agrichemical experiments are therefore impacting the adjacent community and we believe are therefore unethical.

The combinations of pesticides used have not been tested or appropriately regulated, and expose the public to experimental chemical combinations. We find this to be a disturbing failure to gain informed consent from surrounding communities. Without consent or containment, we believe the State of Hawai`i allowance of some pesticide applications violates the principles of critical and historic human rights guidelines such as the Nuremberg Code.<sup>12</sup>

We understand that the Nuremberg Code includes a guideline, which insist that those conducting experiments obtain informed consent prior to conducting human experimentation. Along with the Declaration of Helsinki, the Nuremberg Code forms the basis for Article 7 of the United Nations International Covenant on Civil and Political Rights which states, "In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Furthermore, following the discovery that a chemical released over a dozen U.S. communities in some cases spread hundred of miles over a few days, the U.S. Congress (in 1994) deemed this type of activity as 'unethical human experimentation.' The regulatory agencies (Including the FDA and EPA) promised to uphold the Common Rule so that these kinds of activities would not be repeated without individual informed consent of all those exposed.

We understand that the drift of these chemicals into the adjacent community comes without informed consent, and in many places there is severe and widespread opposition to large-scale industrial agrichemical use and exposure, and that it is therefore unethical to expose the public to experimental chemical combinations against their will.<sup>16</sup>

Even if the subject of the experiment is not intentionally the surrounding community, the people within the exposure path are still the subject of incidental human experimentation. Our natural resources and environment are also subjected to experimental chemical combinations due to the untested mixing of pesticides in which the effects from the drift of pesticides into homes, schools, and sensitive areas will impact communities differently.<sup>17</sup> In the future, medical statistics from Hawai`i communities such as birth defect records and condition diagnosis records will be part of statistical assessments used to correlate the impacts of pesticide drift from research plots into surrounding populations.<sup>13, 14</sup>

We request that the rules consider a process to obtain informed consent from residents and visitors, including the combinations of pesticides and amounts proposed to be sprayed, or guarantee containment of pesticide applications to within the area to which they are applied.

11. Throughout the document in areas where the language is being removed and instead being deferred to federal statutes, we are concerned that this may represent a weakening to the state law and potentially protections for Hawai`i. It must be considered that the pesticide application rules established by the Environmental Protection Agency (EPA) and pesticide labels are designed for a singular growing season, such as is commonplace in the continental United States, unlike Hawai`i which has multiple growing seasons per year. Since pesticide labels do not consider the unique environment and multiple growing seasons of Hawai`i, they are therefore without sufficient assessment and instructions for use, and may be used at higher levels here without regard to the concentration of exposure in an island climate. Therefore, while "the label is the law," has been a common refrain used to oppose state and local controls over pesticide application, labels and federal pesticide guidelines do not provide adequate protection, consideration, or instructions for our climate and conditions.

Considering these matters especially, we must not rely on federal rule or label standards as the best or appropriate level of our stewardship and care of our fragile ecosystem in Hawai`i in regard to toxic agricultural chemicals, nor to safeguard us from effects on human health at the exposure rates our communities face based on federally accepted uses. The Hawai`i state Department of Agriculture must seek more stringent protection for our natural resources and public health in light of our current environmental and federal policy climate under this Presidential administration -- and its climate policy or lack thereof. The Trump administration is making concentrated efforts to deny climate science which includes data pointing to 24% of global emissions stemming from forestry and agriculture. The appointment of pesticide industry insiders to federal regulatory agencies and loss of major national environmental protections over the last two years means that we can no longer rely upon federal rules and regulations to protect our Hawai`i or its people.

Thank you for your careful consideration.

Sincerely,

Robert and Marion McHenry

3609 Kaweonui Rd

Princeville, HI 96722

## McHugh, John

---

**From:** Lanny Sinkin <lanny.sinkin@gmail.com>  
**Sent:** Thursday, November 8, 2018 3:43 PM  
**To:** HDOA.PB  
**Subject:** Comment

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

I agree with Fern Anuenue Holland's comments on the proposed amendments in the pesticide rule making process.

Lanny Sinkin  
87-3185 Boki Road  
Captain Cook, Hawai'i. 96704  
(808) 936-4428  
lanny.sinkin@gmail.com

## McHugh, John

---

**From:** marghee maupin <mamaupin@hotmail.com>  
**Sent:** Thursday, November 8, 2018 3:55 PM  
**To:** HDOA.PB  
**Cc:** marghee maupin  
**Subject:** RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18)

Aloha Department of Agriculture Board Members,

On behalf of the Protect Our Keiki Coalition, including: Hawai'i Alliance for Progressive Action (HAPA), the Center for Food Safety (CFS), Hawai'i SEED, GMO Free Kaua'i, Babes Against Biotech, Sustainable Action Fund for the Environment (SAFE), Pesticide Action Network (PAN) and our tens of thousands of members, we submit the following comments on proposed changes to Chapter 4-66, Hawaii Administrative Rules for Pesticides.

### Section 4-66-2 – Definitions

1. We kindly request that you revise the definition of "runoff" to include water "that directly or eventually enters into lakes, rivers, wetlands, coastal waters, other surface waters, and ground waters."

The inclusion of the above language is more consistent with the federal definition of runoff from both point sources and non-point sources under the US Clean Water Act. Polluted runoff relating to non-point source pollution is clearly described by the EPA as "pollution caused by rainfall or snow melt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters." 1

We strongly support the expansion of the definition of runoff as it is critical the definition includes runoff that flows not just over land or impervious surfaces, but also directly into bodies of surface water or ground waters.

2. Furthermore within this section, the definition of "drift" should also be appropriately explained to mean the airborne movement of chemical(s) (alone or bound to moving particles) for the duration of 5 environmental half-lives (in which time toxicity has broken down and nearly eliminated)

### Section 4-66-32(b)(3) – Restricted Use Pesticides

3. We recommend that the Restricted Use Pesticides (RUPs) sections be amended by adding the additional language underlined in bold:

"pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened, and endangered species due to both direct and indirect effects from the pesticides or pesticides uses on such species, or their designated critical habitats."

4. Furthermore, relating to Restricted Use Pesticides, we oppose the amendment to abolish the head of the Department of Agriculture from consulting the Pesticide Advisory Committee under section 4-66-32(d). We believe that the proposed process for reviewing and classifying restricted use pesticides does not adequately account for the views of the Pesticide Advisory Committee, which we value as an important component of the safe and fair evaluation of toxins in our community.

The proposed process would lack public transparency and does not allow for critical public input. The process would create an internal review process that does not take public comments into account until it is put forth before the Board of Agriculture. We strongly believe that public input is a critical part of decision-making.

We understand that efficiency requires that there be a public comment period during the determination by the Department of Agriculture, and recommends that subsection (e) be amended to allow this.

Alternatively, this subsection could be amended to require that the head submit the list of proposed Restricted Use Pesticides to the Board for adoption, and also submit and publish its internal review findings to the Board for public comment. The public should have an opportunity to comment on pesticides which have been proposed for adoption as a Restricted Use Pesticide and those that the Department specifically will not classify as a Restricted Use Pesticide.

The current proposed amendments to the rules do not specify what the public will be allow to comment on prior to the Board's review. Moreover, currently, the turnaround for public comment on Board agenda items is very short. We

request that the Proposed Amendments clarify that the public will have an opportunity to comment on the Department's internal reviews (including those that the Department chose not to propose for restricted use pesticide classification), and that at minimum, a 60-day advance notice be required to allow for meaningful public participation in a 30-day public comment period.

#### Section 4-66-32.1(b)(3) – Evaluation of Pesticide Uses

5. We recommend that this section be amended with the following additional language underlined in bold:

Pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non target organisms, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened and endangered species, due to both direct and indirect effects from the pesticides or pesticide uses on such species or their designated critical habitats.

We believe it to be of utmost importance that the language clearly identifies listed threatened species, both state and federal and is expanded to include their critical habitats.

#### Section 4-66-47 Experimental Use Permits

6. We oppose the exemption of experimental use permits for mixtures of pesticides under the conditions outlined, because we strongly believe that no pesticides should be excluded from any rules outlined in 4-66. All pesticides and pesticide mixtures regardless of use, should be subject to the rules, record-keeping, and permitting requirements.

#### Section 4-66-64.2 – Buffer Zones

7. We applaud the State of Hawai'i for taking steps toward establishing buffer zones around schools, indicating some progress toward a more comprehensive pesticide management plan. However, we believe the distance of 100 feet to be woefully inadequate, the size of which was determined arbitrarily without scientific regard for sufficient safety measures to protect children, parents, and Department of Education staff from pesticide drift.<sup>3</sup> Spray trucks release large amounts of Restricted Use Pesticides, which are picked up by particles in the wind and dispersed into the surrounding environment much farther than 100 feet.<sup>4</sup>

In California, buffer zones around schools which prohibit the application of agricultural pesticides are 1,320 feet, a quarter of a mile. This distance is also considered by the EPA when investigating pesticide drift. It is clearly understood that the likelihood of exposure to pesticide drift increases as the distance from application decreases, and that pesticides drift even farther than one-quarter mile.<sup>4</sup> In addition to acute poisoning, the long-term health effects of pesticide exposure show up at distances far beyond one-quarter mile. In island settings with sometimes limited space, this should also indicate an urgent need to reduce the pesticide exposure load.<sup>5, 6, 7,</sup>

8 For the above listed reasons, we strongly believe that Hawai'i buffer zones around schools must be meaningfully increased in size to better protect our keiki.

The deficient distance between the spray and the children at risk, coupled with limited hours is not sufficient to protect them from exposure to pesticide drift, especially in cases of heavy volatilization. Please consider that many schools are utilized after hours by children for after school programs, sports, weekend and night classes, and community events for example.<sup>9</sup> Please also consider the multitudes of evidence increasing medical concern and demonstrating harm to children's health from chronic, low-level exposure to pesticides,<sup>4</sup> many of which are persistent and outlast the initial application window by remaining and accumulating in the exposed environment.<sup>2, 10</sup> Eliminating the use of Restricted Use Pesticides between 7:00 a.m. and 4:00 p.m. on school days is a start, but the coalition strongly believes that these buffer zones should be significantly larger and permanent.

8. We very strongly support the inclusion of mandatory pesticide buffer zones protecting all communities and sensitive areas. It is critically important that the amendments include imposing mandatory green screens and reasonable buffer zones around areas where pesticides are being applied. These are simple, workable measures that protect public health and the environment and have been repeatedly requested by communities affected by high levels of pesticide exposure. We respectfully request that the Department work to include an outline of appropriate buffer zones which buffer non-target impacts, reduce drift overall and decrease pesticide-laden runoff.

#### Section 4-66-66.1 Appendix A - Enforcement

We believe that the company employing and directing the applicator should also be held responsible for violations under the enforcement provisions. We believe the department should establish penalties for violations that occur at the direction of supervisors and the company responsible for the spraying and the legal language be adjusted to reflect this appropriately.

9. It is imperative that our pesticide regulation reflects scientific understanding and incorporates the potential threats of combinations of chemicals. Combining chemicals can result in potentiation, alter half-lives, and completely change the properties and toxicity of a substance. Combination chemicals are experimental in nature and should not be subject to any exemptions or loopholes that allow them to not be treated as such.

10. We understand that the drift of experimental pesticides and mixtures of pesticides into communities and the surrounding environment does enter into people and our resources.<sup>15</sup> These agrichemical experiments are therefore impacting the adjacent community and we believe are therefore unethical.

The combinations of pesticides used have not been tested or appropriately regulated, and expose the public to experimental chemical combinations. We find this to be a disturbing failure to gain informed consent from surrounding communities. Without consent or containment, we believe the State of Hawai'i allowance of some pesticide applications violates the principles of critical and historic human rights guidelines such as the Nuremberg Code.<sup>12</sup>

We understand that the Nuremberg Code includes a guideline, which insist that those conducting experiments obtain informed consent prior to conducting human experimentation. Along with the Declaration of Helsinki, the Nuremberg Code forms the basis for Article 7 of the United Nations International Covenant on Civil and Political Rights which states, "In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Furthermore, following the discovery that a chemical released over a dozen U.S. communities in some cases spread hundred of miles over a few days, the U.S. Congress (in 1994) deemed this type of activity as 'unethical human experimentation.' The regulatory agencies (Including the FDA and EPA) promised to uphold the Common Rule so that these kinds of activities would not be repeated without individual informed consent of all those exposed.

We understand that the drift of these chemicals into the adjacent community comes without informed consent, and in many places there is severe and widespread opposition to large-scale industrial agrichemical use and exposure, and that it is therefore unethical to expose the public to experimental chemical combinations against their will.<sup>16</sup>

Even if the subject of the experiment is not intentionally the surrounding community, the people within the exposure path are still the subject of incidental human experimentation. Our natural resources and environment are also subjected to experimental chemical combinations due to the untested mixing of pesticides in which the effects from the drift of pesticides into homes, schools, and sensitive areas will impact communities differently.<sup>17</sup> In the future, medical statistics from Hawai'i communities such as birth defect records and condition diagnosis records will be part of statistical assessments used to correlate the impacts of pesticide drift from research plots into surrounding populations.<sup>13, 14</sup>

We request that the rules consider a process to obtain informed consent from residents and visitors, including the combinations of pesticides and amounts proposed to be sprayed, or guarantee containment of pesticide applications to within the area to which they are applied.

11. Throughout the document in areas where the language is being removed and instead being deferred to federal statutes, we are concerned that this may represent a weakening to the state law and potentially protections for Hawai'i. It must be considered that the pesticide application rules established by the Environmental Protection Agency (EPA) and pesticide labels are designed for a singular growing season, such as is commonplace in the continental United States, unlike Hawai'i which has multiple growing seasons per year. Since pesticide labels do not consider the unique environment and multiple growing seasons of Hawai'i, they are therefore without sufficient assessment and instructions for use, and may be used at higher levels here without regard to the concentration of exposure in an island climate. Therefore, while "the label is the law," has been a common refrain used to oppose state and local controls over pesticide application, labels and federal pesticide guidelines do not provide adequate protection, consideration, or instructions for our climate and conditions.

Considering these matters especially, we must not rely on federal rule or label standards as the best or appropriate level of our stewardship and care of our fragile ecosystem in Hawai'i in regard to toxic agri-chemicals, nor to safeguard us from effects on human health at the exposure rates our communities face based on federally accepted uses. The Hawai'i state Department of Agriculture must seek more stringent protection for our natural resources and public health in light of our current environmental and federal policy climate under this Presidential administration -- and its climate policy or lack thereof. The Trump administration is making concentrated efforts to deny climate science which includes data pointing to 24% of global emissions stemming from forestry and agriculture. The appointment of pesticide industry insiders to federal regulatory agencies and loss of major national environmental protections over the last two years means that we can no longer rely upon federal rules and regulations to protect our Hawai'i or its people.

Should the board have additional questions or need additional information or resources from the coalition please contact Fern Anuenue Holland, Program Associate for HAPA.

Thank you for considering our comments and doing your best to ensure these rules efficiently protect people and the environment from the harmful impacts of pesticides.

*Aloha,*

*Marghee Maupin, APRN, primary care provider on Kauai*  
[www.marghee.com](http://www.marghee.com)

## McHugh, John

---

**From:** Shannon Rudolph <shannonkona@gmail.com>  
**Sent:** Thursday, November 8, 2018 4:07 PM  
**Subject:** RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18)

RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18) Aloha, I am a 35 year Hawai'i resident who has been following Hawai'i pesticide issues for more than 10 years. I have been very busy with elections & haven't had time to submit my own testimony for proposed rule changes to Chapter 4-46 Pesticides but completely agree with Fern Anuenue Holland, below. Please accept her testimony as my own. Mahalo, Shannon Rudolph P. O. 243 Holualoa, Hi. 06725

Aloha Department of Agriculture Board Members,

On behalf of the Protect Our Keiki Coalition, including: Hawai'i Alliance for Progressive Action (HAPA), the Center for Food Safety (CFS), Hawai'i SEED, GMO Free Kaua'i, Babes Against Biotech, Sustainable Action Fund for the Environment (SAFE), Pesticide Action Network (PAN) and our tens of thousands of members, we submit the following comments on proposed changes to Chapter 4-66, Hawaii Administrative Rules for Pesticides.

### Section 4-66-2 – Definitions

1. We kindly request that you revise the definition of "runoff" to include water "that directly or eventually enters into lakes, rivers, wetlands, coastal waters, other surface waters, and ground waters."

The inclusion of the above language is more consistent with the federal definition of runoff from both point sources and non-point sources under the US Clean Water Act. Polluted runoff relating to non-point source pollution is clearly described by the EPA as "pollution caused by rainfall or snow melt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters." 1

We strongly support the expansion of the definition of runoff as it is critical the definition includes runoff that flows not just over land or impervious surfaces, but also directly into bodies of surface water or ground waters.

2. Furthermore within this section, the definition of "drift" should also be appropriately explained to mean the airborne movement of chemical(s) (alone or bound to moving particles) for the duration of 5 environmental half-lives (in which time toxicity has broken down and nearly eliminated)

### Section 4-66-32(b)(3) – Restricted Use Pesticides

3. We recommend that the Restricted Use Pesticides (RUPs) sections be amended by adding the additional language underlined in bold:

"pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened, and endangered species due to both direct and indirect effects from the pesticides or pesticides uses on such species, or their designated critical habitats."

4. Furthermore, relating to Restricted Use Pesticides, we oppose the amendment to abolish the head of the Department of Agriculture from consulting the Pesticide Advisory Committee under section 4-66-32(d). We believe that the proposed process for reviewing and classifying restricted use pesticides does not adequately account for the views of the Pesticide Advisory Committee, which we value as an important component of the safe and fair evaluation of toxins in our community.

The proposed process would lack public transparency and does not allow for critical public input. The process would create an internal review process that does not take public comments into account until it is put forth before the Board of Agriculture.

We strongly believe that public input is a critical part of decision-making.

We understand that efficiency requires that there be a public comment period during the determination by the Department of Agriculture, and recommends that subsection (e) be amended to allow this.

Alternatively, this subsection could be amended to require that the head submit the list of proposed Restricted Use Pesticides to the Board for adoption, and also submit and publish its internal review findings to the Board for public comment. The public should have an opportunity to comment on pesticides which have been proposed for adoption as a Restricted Use Pesticide and those that the Department specifically will not classify as a Restricted Use Pesticide.

The current proposed amendments to the rules do not specify what the public will be allowed to comment on prior to the Board's review. Moreover, currently, the turnaround for public comment on Board agenda items is very short. We request that the Proposed Amendments clarify that the public will have an opportunity to comment on the Department's internal reviews (including those that the Department chose not to propose for restricted use pesticide classification), and that at minimum, a 60-day advance notice be required to allow for meaningful public participation in a 30-day public comment period.

#### Section 4-66-32.1(b)(3) – Evaluation of Pesticide Uses

5. We recommend that this section be amended with the following additional language underlined in bold: Pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non target organisms, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened and endangered species, due to both direct and indirect effects from the pesticides or pesticide uses on such species or their designated critical habitats. We believe it to be of utmost importance that the language clearly identifies listed threatened species, both state and federal and is expanded to include their critical habitats.

#### Section 4-66-47 Experimental Use Permits

6. We oppose the exemption of experimental use permits for mixtures of pesticides under the conditions outlined, because we strongly believe that no pesticides should be excluded from any rules outlined in 4-66. All pesticides and pesticide mixtures regardless of use, should be subject to the rules, record-keeping, and permitting requirements.

#### Section 4-66-64.2 – Buffer Zones

7. We applaud the State of Hawai'i for taking steps toward establishing buffer zones around schools, indicating some progress toward a more comprehensive pesticide management plan. However, we believe the distance of 100 feet to be woefully inadequate, the size of which was determined arbitrarily without scientific regard for sufficient safety measures to protect children, parents, and Department of Education staff from pesticide drift.<sup>3</sup> Spray trucks release large amounts of Restricted Use Pesticides, which are picked up by particles in the wind and dispersed into the surrounding environment much farther than 100 feet.<sup>4</sup>

In California, buffer zones around schools which prohibit the application of agricultural pesticides are 1,320 feet, a quarter of a mile. This distance is also considered by the EPA when investigating pesticide drift. It is clearly understood that the likelihood of exposure to pesticide drift increases as the distance from application decreases, and that pesticides drift even farther than one-quarter mile.<sup>4</sup> In addition to acute poisoning, the long-term health effects of pesticide exposure show up at distances far beyond one-quarter mile. In island settings with sometimes limited space, this should also indicate an urgent need to reduce the pesticide exposure load.<sup>5, 6, 7,</sup>

<sup>8</sup> For the above listed reasons, we strongly believe that Hawai'i buffer zones around schools must be meaningfully increased in size to better protect our keiki.

The deficient distance between the spray and the children at risk, coupled with limited hours is not sufficient to protect them from exposure to pesticide drift, especially in cases of heavy volatilization. Please consider that many schools are utilized after hours by children for after school programs, sports, weekend and night classes, and community events for example.<sup>9</sup> Please also consider the multitudes of evidence increasing medical concern and demonstrating harm to children's health from chronic, low-level exposure to pesticides,<sup>4</sup> many of which are persistent and outlast the initial application window by remaining and accumulating in the exposed environment.<sup>2, 10</sup> Eliminating the use of Restricted Use Pesticides between 7:00 a.m. and 4:00 p.m. on school days is a start, but the coalition strongly believes that these buffer zones should be significantly larger and permanent.

<sup>8</sup>. We very strongly support the inclusion of mandatory pesticide buffer zones protecting all communities and sensitive areas. It is critically important that the amendments include imposing mandatory green screens and reasonable buffer zones around

areas where pesticides are being applied. These are simple, workable measures that protect public health and the environment and have been repeatedly requested by communities affected by high levels of pesticide exposure. We respectfully request that the Department work to include an outline of appropriate buffer zones which buffer non-target impacts, reduce drift overall and decrease pesticide-laden runoff.

#### Section 4-66-66.1 Appendix A - Enforcement

We believe that the company employing and directing the applicator should also be held responsible for violations under the enforcement provisions. We believe the department should establish penalties for violations that occur at the direction of supervisors and the company responsible for the spraying and the legal language be adjusted to reflect this appropriately.

9. It is imperative that our pesticide regulation reflects scientific understanding and incorporates the potential threats of combinations of chemicals. Combining chemicals can result in potentiation, alter half-lives, and completely change the properties and toxicity of a substance. Combination chemicals are experimental in nature and should not be subject to any exemptions or loopholes that allow them to not be treated as such.

10. We understand that the drift of experimental pesticides and mixtures of pesticides into communities and the surrounding environment does enter into people and our resources.<sup>15</sup> These agrichemical experiments are therefore impacting the adjacent community and we believe are therefore unethical.

The combinations of pesticides used have not been tested or appropriately regulated, and expose the public to experimental chemical combinations. We find this to be a disturbing failure to gain informed consent from surrounding communities. Without consent or containment, we believe the State of Hawai'i allowance of some pesticide applications violates the principles of critical and historic human rights guidelines such as the Nuremberg Code.<sup>12</sup>

We understand that the Nuremberg Code includes a guideline, which insist that those conducting experiments obtain informed consent prior to conducting human experimentation. Along with the Declaration of Helsinki, the Nuremberg Code forms the basis for Article 7 of the United Nations International Covenant on Civil and Political Rights which states, "In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Furthermore, following the discovery that a chemical released over a dozen U.S. communities in some cases spread hundred of miles over a few days, the U.S. Congress (in 1994) deemed this type of activity as 'unethical human experimentation.' The regulatory agencies (including the FDA and EPA) promised to uphold the Common Rule so that these kinds of activities would not be repeated without individual informed consent of all those exposed.

We understand that the drift of these chemicals into the adjacent community comes without informed consent, and in many places there is severe and widespread opposition to large-scale industrial agrichemical use and exposure, and that it is therefore unethical to expose the public to experimental chemical combinations against their will.<sup>16</sup>

Even if the subject of the experiment is not intentionally the surrounding community, the people within the exposure path are still the subject of incidental human experimentation. Our natural resources and environment are also subjected to experimental chemical combinations due to the untested mixing of pesticides in which the effects from the drift of pesticides into homes, schools, and sensitive areas will impact communities differently.<sup>17</sup> In the future, medical statistics from Hawai'i communities such as birth defect records and condition diagnosis records will be part of statistical assessments used to correlate the impacts of pesticide drift from research plots into surrounding populations.<sup>13, 14</sup>

We request that the rules consider a process to obtain informed consent from residents and visitors, including the combinations of pesticides and amounts proposed to be sprayed, or guarantee containment of pesticide applications to within the area to which they are applied.

11. Throughout the document in areas where the language is being removed and instead being deferred to federal statutes, we are concerned that this may represent a weakening to the state law and potentially protections for Hawai'i. It must be considered that the pesticide application rules established by the Environmental Protection Agency (EPA) and pesticide labels are designed for a singular growing season, such as is commonplace in the continental United States, unlike Hawai'i which has multiple growing seasons per year. Since pesticide labels do not consider the unique environment and multiple growing seasons of Hawai'i, they are therefore without sufficient assessment and instructions for use, and may be used at higher levels

here without regard to the concentration of exposure in an island climate. Therefore, while “the label is the law,” has been a common refrain used to oppose state and local controls over pesticide application, labels and federal pesticide guidelines do not provide adequate protection, consideration, or instructions for our climate and conditions.

Considering these matters especially, we must not rely on federal rule or label standards as the best or appropriate level of our stewardship and care of our fragile ecosystem in Hawai`i in regard to toxic agri-chemicals, nor to safeguard us from effects on human health at the exposure rates our communities face based on federally accepted uses. The Hawai`i state Department of Agriculture must seek more stringent protection for our natural resources and public health in light of our current environmental and federal policy climate under this Presidential administration -- and its climate policy or lack thereof. The Trump administration is making concentrated efforts to deny climate science which includes data pointing to 24% of global emissions stemming from forestry and agriculture. The appointment of pesticide industry insiders to federal regulatory agencies and loss of major national environmental protections over the last two years means that we can no longer rely upon federal rules and regulations to protect our Hawai`i or its people.

Should the board have additional questions or need additional information or resources from the coalition please contact Fern Anuenue Holland, Program Associate for HAPA.

Thank you for considering our comments and doing your best to ensure these rules efficiently protect people and the environment from the harmful impacts of pesticides.

--

How wonderful it is that nobody need wait a single moment before starting to improve the world. ~ Anne Frank

## McHugh, John

---

**From:** Jennifer P <jpzubz@gmail.com>  
**Sent:** Thursday, November 8, 2018 4:25 PM  
**To:** HDOA.PB

HERE:

To: [HDOA.PB@hawaii.gov](mailto:HDOA.PB@hawaii.gov)

RE: Proposed Rule Changes for Chapter 4-66 – Pesticides (Revised 9/25/18)

Aloha Department of Agriculture Board Members,

On behalf of the Protect Our Keiki Coalition, including: Hawai'i Alliance for Progressive Action (HAPA), the Center for Food Safety (CFS), Hawai'i SEED, GMO Free Kaua'i, Babes Against Biotech, Sustainable Action Fund for the Environment (SAFE), Pesticide Action Network (PAN) and our tens of thousands of members, we submit the following comments on proposed changes to Chapter 4-66, Hawaii Administrative Rules for Pesticides.

### Section 4-66-2 – Definitions

1. We kindly request that you revise the definition of "runoff" to include water "that directly or eventually enters into lakes, rivers, wetlands, coastal waters, other surface waters, and ground waters."

The inclusion of the above language is more consistent with the federal definition of runoff from both point sources and non-point sources under the US Clean Water Act. Polluted runoff relating to non-point source pollution is clearly described by the EPA as "pollution caused by rainfall or snow melt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters." 1

We strongly support the expansion of the definition of runoff as it is critical the definition includes runoff that flows not just over land or impervious surfaces, but also directly into bodies of surface water or ground waters.

2. Furthermore within this section, the definition of "drift" should also be appropriately explained to mean the airborne movement of chemical(s) (alone or bound to moving particles) for the duration of 5 environmental half-lives (in which time toxicity has broken down and nearly eliminated)

### Section 4-66-32(b)(3) – Restricted Use Pesticides

3. We recommend that the Restricted Use Pesticides (RUPs) sections be amended by adding the additional language underlined in bold:

"pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened, and endangered species due to both direct and indirect effects from the pesticides or pesticides uses on such species, or their designated critical habitats."

4. Furthermore, relating to Restricted Use Pesticides, we oppose the amendment to abolish the head of the Department of Agriculture from consulting the Pesticide Advisory Committee under section 4-66-32(d). We believe that the proposed process for reviewing and classifying restricted use pesticides does not adequately account for the views of the Pesticide Advisory Committee, which we value as an important component of the safe and fair evaluation of toxins in our community.

The proposed process would lack public transparency and does not allow for critical public input. The process would create an internal review process that does not take public comments into account until it is put forth before the Board of Agriculture. We strongly believe that public input is a critical part of decision-making.

We understand that efficiency requires that there be a public comment period during the determination by the Department of Agriculture, and recommends that subsection (e) be amended to allow this.

Alternatively, this subsection could be amended to require that the head submit the list of proposed Restricted Use Pesticides to the Board for adoption, and also submit and publish its internal review findings to the Board for public comment. The public should have an opportunity to comment on pesticides which have been proposed for adoption as a Restricted Use Pesticide and those that the Department specifically will not classify as a Restricted Use Pesticide.

The current proposed amendments to the rules do not specify what the public will be allow to comment on prior to the Board's review. Moreover, currently, the turnaround for public comment on Board agenda items is very short. We request that the Proposed Amendments clarify that the public will have an opportunity to comment on the Department's internal reviews (including those that the Department chose not to propose for restricted use pesticide classification), and that at minimum, a 60-day advance notice be required to allow for meaningful public participation in a 30-day public comment period.

Section 4-66-32.1(b)(3) – Evaluation of Pesticide Uses

5. We recommend that this section be amended with the following additional language underlined in bold:

Pesticides or pesticide uses [which] that can reasonably be anticipated to result in contamination of surface water, groundwater, or significant reductions in non target organisms, or significant reductions in non-target organisms, or significant reduction or fatality to state and federally listed threatened and endangered species, due to both direct and indirect effects from the pesticides or pesticide uses on such species or their designated critical habitats.

We believe it to be of utmost importance that the language clearly identifies listed threatened species, both state and federal and is expanded to include their critical habitats.

Section 4-66-47 Experimental Use Permits

6. We oppose the exemption of experimental use permits for mixtures of pesticides under the conditions outlined, because we strongly believe that no pesticides should be excluded from any rules outlined in 4-66. All pesticides and pesticide mixtures regardless of use, should be subject to the rules, record-keeping, and permitting requirements.

Section 4-66-64.2 – Buffer Zones

7. We applaud the State of Hawai'i for taking steps toward establishing buffer zones around schools, indicating some progress toward a more comprehensive pesticide management plan. However, we believe the distance of 100 feet to be woefully inadequate, the size of which was determined arbitrarily without scientific regard for sufficient safety measures to protect children, parents, and Department of Education staff from pesticide drift.<sup>3</sup> Spray trucks release large amounts of Restricted Use Pesticides, which are picked up by particles in the wind and dispersed into the surrounding environment much farther than 100 feet.<sup>4</sup>

In California, buffer zones around schools which prohibit the application of agricultural pesticides are 1,320 feet, a quarter of a mile. This distance is also considered by the EPA when investigating pesticide drift. It is clearly understood that the likelihood of exposure to pesticide drift increases as the distance from application decreases, and that pesticides drift even farther than one-quarter mile.<sup>4</sup> In addition to acute poisoning, the long-term health effects of pesticide exposure show up at distances far beyond one-quarter mile. In island settings with sometimes limited space, this should also indicate an urgent need to reduce the pesticide exposure load.<sup>5, 6, 7,</sup>

8 For the above listed reasons, we strongly believe that Hawai'i buffer zones around schools must be meaningfully increased in size to better protect our keiki.

The deficient distance between the spray and the children at risk, coupled with limited hours is not sufficient to protect them from exposure to pesticide drift, especially in cases of heavy volatilization. Please consider that many schools are utilized after hours by children for after school programs, sports, weekend and night classes, and community events for example.<sup>9</sup> Please also consider the multitudes of evidence increasing medical concern and demonstrating harm to children's health from chronic, low-level exposure to pesticides,<sup>4</sup> many of which are persistent and outlast the initial application window by remaining and accumulating in the exposed environment.<sup>2, 10</sup> Eliminating the use of Restricted Use Pesticides between 7:00 a.m. and 4:00 p.m. on school days is a start, but the coalition strongly believes that these buffer zones should be significantly larger and permanent.

8. We very strongly support the inclusion of mandatory pesticide buffer zones protecting all communities and sensitive areas. It is critically important that the amendments include imposing mandatory green screens and reasonable buffer zones around areas where pesticides are being applied. These are simple, workable measures that protect public health and the environment and have been repeatedly requested by communities affected by high levels of pesticide exposure. We respectfully request that the Department work to include an outline of appropriate buffer zones which buffer non-target impacts, reduce drift overall and decrease pesticide-laden runoff.

Section 4-66-66.1 Appendix A - Enforcement

We believe that the company employing and directing the applicator should also be held responsible for violations under the enforcement provisions. We believe the department should establish penalties for violations that occur at the direction of supervisors and the company responsible for the spraying and the legal language be adjusted to reflect this appropriately.

9. It is imperative that our pesticide regulation reflects scientific understanding and incorporates the potential threats of combinations of chemicals. Combining chemicals can result in potentiation, alter half-lives, and completely change the properties and toxicity of a substance. Combination chemicals are experimental in nature and should not be subject to any exemptions or loopholes that allow them to not be treated as such.

10. We understand that the drift of experimental pesticides and mixtures of pesticides into communities and the surrounding environment does enter into people and our resources.<sup>15</sup> These agrichemical experiments are therefore impacting the adjacent community and we believe are therefore unethical.

The combinations of pesticides used have not been tested or appropriately regulated, and expose the public to experimental chemical combinations. We find this to be a disturbing failure to gain informed consent from surrounding communities. Without consent or containment, we believe the State of Hawai'i allowance of some pesticide applications violates the principles of critical and historic human rights guidelines such as the Nuremberg Code.<sup>12</sup>

We understand that the Nuremberg Code includes a guideline, which insist that those conducting experiments obtain informed consent prior to conducting human experimentation. Along with the Declaration of Helsinki, the Nuremberg Code forms the basis for Article 7 of

the United Nations International Covenant on Civil and Political Rights which states, "In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Furthermore, following the discovery that a chemical released over a dozen U.S. communities in some cases spread hundred of miles over a few days, the U.S. Congress (in 1994) deemed this type of activity as 'unethical human experimentation.' The regulatory agencies (Including the FDA and EPA) promised to uphold the Common Rule so that these kinds of activities would not be repeated without individual informed consent of all those exposed.

We understand that the drift of these chemicals into the adjacent community comes without informed consent, and in many places there is severe and widespread opposition to large-scale industrial agrichemical use and exposure, and that it is therefore unethical to expose the public to experimental chemical combinations against their will.<sup>16</sup>

Even if the subject of the experiment is not intentionally the surrounding community, the people within the exposure path are still the subject of incidental human experimentation. Our natural resources and environment are also subjected to experimental chemical combinations due to the untested mixing of pesticides in which the effects from the drift of pesticides into homes, schools, and sensitive areas will impact communities differently.<sup>17</sup> In the future, medical statistics from Hawai'i communities such as birth defect records and condition diagnosis records will be part of statistical assessments used to correlate the impacts of pesticide drift from research plots into surrounding populations.<sup>13, 14</sup>

We request that the rules consider a process to obtain informed consent from residents and visitors, including the combinations of pesticides and amounts proposed to be sprayed, or guarantee containment of pesticide applications to within the area to which they are applied.

11. Throughout the document in areas where the language is being removed and instead being deferred to federal statutes, we are concerned that this may represent a weakening to the state law and potentially protections for Hawai'i. It must be considered that the pesticide application rules established by the Environmental Protection Agency (EPA) and pesticide labels are designed for a singular growing season, such as is commonplace in the continental United States, unlike Hawai'i which has multiple growing seasons per year. Since pesticide labels do not consider the unique environment and multiple growing seasons of Hawai'i, they are therefore without sufficient assessment and instructions for use, and may be used at higher levels here without regard to the concentration of exposure in an island climate. Therefore, while "the label is the law," has been a common refrain used to oppose state and local controls over pesticide application, labels and federal pesticide guidelines do not provide adequate protection, consideration, or instructions for our climate and conditions.

Considering these matters especially, we must not rely on federal rule or label standards as the best or appropriate level of our stewardship and care of our fragile ecosystem in Hawai'i in regard to toxic agri-chemicals, nor to safeguard us from effects on human health at the exposure rates our communities face based on federally accepted uses. The Hawai'i state Department of Agriculture must seek more stringent protection for our natural resources and public health in light of our current environmental and federal policy climate under this Presidential administration -- and its climate policy or lack thereof. The Trump administration is making concentrated efforts to deny climate science which includes data pointing to 24% of global emissions stemming from forestry and agriculture. The appointment of pesticide industry insiders to federal regulatory agencies and loss of major national environmental protections over the last two years means that we can no longer rely upon federal rules and regulations to protect our Hawai'i or its people.

Should the board have additional questions or need additional information or resources from the coalition please contact Fern Anuenue Holland, Program Associate for HAPA.

Thank you for considering our comments and doing your best to ensure these rules efficiently protect people and the environment from the harmful impacts of pesticides.

NOV 07 2018

# Fax

TO:	Pesticides Branch	FROM:	Susan Wiener
COMPANY:	HI Dept of Ag	COMPANY:	
FAX:	8089739418	FAX:	
SUBJECT:	Testimony	DATE:	Wednesday, November 7, 2018

Testimony regarding proposed amendments to Hawaii Administrative Rules Section 4-66

-----  
I sent the following testimony by email, but want to make sure that you have actually received it so am faxing it as well.

Thank you for your time and efforts in considering public input.  
-----

I am concerned about the proposed removal from the rules of the listing of Restricted Use Pesticides, section 4-66-32 (e), and maintaining these only as a list external to the rules. I feel that the public is best served by continuing to have pesticides that have been determined as belonging on such a list to be individually named in the rules.

I suggest that newly written sections 4-66-32 (c) through (g) are included in the amended rules, without removing the listing that had been in section (e). And as new pesticides are

reviewed and determined to meet or exceed the criteria set forth in 4-66-32 (b) through the system laid out in these new sections, they be added individually by name into the rules.

Respectfully,

Susan Wiener

## McHugh, John

---

**From:** Toni Liljengren <toniskin@hotmail.com>  
**Sent:** Wednesday, October 31, 2018 6:26 PM  
**To:** HDOA.PB  
**Subject:** Pestasides

Please consider:

We don't want any pesticides, Glyposate, poison in the land air or water.  
Just say No to Monsanto

buffer zones is not enough

## McHugh, John

---

**From:** Dennis Mendonca <dennism08@gmail.com>  
**Sent:** Wednesday, October 31, 2018 6:42 PM  
**To:** HDOA.PB; repnakamura@capitol.hawaii.gov  
**Subject:** Testimony to pesticide restrictions at Dept of AG hearing on Kauai 11/05

To Whom It May Concern,

These matters are really beyond my level of expertise yet I have to wonder who wrote these guideline changes and what is the purpose?

The elimination in 4-66-5 preventing misleading labelling, and in 4-66-4 regarding the labelling statement and 4-66-14 regarding accuracy of stated percentages; these changes do not seem in the public interest.

I would expect this from the current EPA, I would not expect this from the State of Hawaii. Please cancel these proposed changes until a further review can be made . Sincerely,

Dennis Mendonca  
Kauai, HI

## McHugh, John

---

**From:** Caroline Miura <revmiura@gmail.com>  
**Sent:** Saturday, November 3, 2018 10:54 AM  
**To:** HDOA.PB  
**Subject:** testimony

Please do not amend the pesticide rules.  
Mahalo,  
Rev. Caroline C Miura

Sent from [Mail](#) for Windows 10



Virus-free. [www.avast.com](http://www.avast.com)

## McHugh, John

---

**From:** Sequoya <energysavant@yahoo.com>  
**Sent:** Tuesday, November 6, 2018 12:15 PM  
**To:** HDOA.PB  
**Subject:** testimony - proposed amendments to pesticide administrative rules

I am concerned about the proposed removal from the rules of the listing of Restricted Use Pesticides, section 4-66-32 (e), and maintaining these only as a list external to the rules. I feel that the public is best served by continuing to have pesticides that have been determined as belonging on such a list to be individually named in the rules.

I suggest that newly written sections 4-66-32 (c) through (g) are included in the amended rules, without removing the listing that had been in section (e). And as new pesticides are reviewed and determined to meet or exceed the criteria set forth in 4-66-32 (b) through the system laid out in these new sections, they be added individually by name into the rules.

Respectfully,

Susan Wiener

## McHugh, John

---

**From:** James Saulez <jsaulez@beihawaii.com>  
**Sent:** Thursday, November 8, 2018 1:53 PM  
**To:** HDOA.PB  
**Subject:** testimony

*Dear Hawaii Department of Agriculture personnel:*

*In reviewing the proposed pesticide administrative rules (§4-66-62 part d) the text in the proposed rules does not reflect the text of Act 45 for restricted pesticide use reporting and should be modified to match the wording of Act 45.*

*Further, in the same section and as per the wording of Act 45, it should be clarified in the proposed rules that there will be two separate reports. One with information from restricted use pesticide users submitted to Hawaii Department of Agriculture for department use only, and the other provided by Hawaii Department of Agriculture for the public that is a summary of the collected information.*

*Best regards and aloha*

Anne Vaccaro  
Director of Agronomy, BEI Hawaii  
311 Pacific St, Honolulu, HI  
E: [avaccaro@beihawaii.com](mailto:avaccaro@beihawaii.com)  
P: [\(808\) 532-7442](tel:(808)532-7442)

**McHugh, John**

---

**From:** aameden@hawaii.rr.com  
**Sent:** Thursday, November 8, 2018 3:48 PM  
**To:** HDOA.PB  
**Subject:** BAN PESTICIDES!!!

## McHugh, John

---

**From:** Robert Boesch <boeschr@hawaii.edu>  
**Sent:** Thursday, November 8, 2018 12:23 PM  
**To:** HDOA.PB  
**Cc:** McHugh, John; Enright, Scott; Charles Nagamine  
**Subject:** Testimony

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dealing with pesticide rules is a challenging job and those who participated in the process should be commended for their patience and endurance in bringing the amendments to this stage of development. Here are my comments:

The definition of attractant is being removed. This was always a difficult issue because attractants are important to the efficacy of many pesticides, including baits, pheromones, and some devices (lights, and Carbon Dioxide generators). If there is no attraction, there is no control. The effectiveness of the toxicant is often determined by the success of the attractant. Attractants must be regulated (even if regulation is minimal - pheromones are considered reduced risk pesticides by EPA), otherwise, fraudulent and ineffective products will pose regulatory challenges. Synergists, such as piperonyl butoxide, which is used with pyrethrins to enhance their effectiveness should also be regulated.

The definition of drift and enclosed space production are important changes. These definitions that should reduce confusion about drift, and expand enclosed space to include additional structures.

Why is a definition of reasonable needed? Shouldn't the dictionary definition suffice?

The definition of use is expanded, but an issue that plagued pesticide regulatory programs in the past was restricting types of crops that could be grown after a pesticide was applied. Now, in addition to picloram, which requires an annual permit, there are other persistent herbicides, insecticides and one rodenticide which are very persistent.

Why is persistence important? In agricultural situations, persistence is important because inadvertent residues could cause crops or livestock to have residues above maximum residue levels allowed (tolerance). Persistent chemicals may also leach to groundwater and impact the selection of future crops.

Hawaii had major food safety threats caused by persistent chemicals. Even though there was a 180 day interval to harvest green chop from pineapple for cattle forage, heptachlor epoxide residues exceeded tolerances. EPA initiated enforcement action because some of the green chop was harvested before the 180 day interval expired. Heptachlor was cancelled, and the dairy industry struggled to rid lactating cattle of the heptachlor residues. Because heptachlor is fat soluble, this meant that much milk was wasted to get rid of the fat and the heptachlor residues. A longer preharvest interval would not be protective because residues stayed in the soil until it was plowed or disturbed. The use of pineapple green chop to feed cattle ceased.

Picloram was the first herbicide subject an annual permit in Hawaii. The manufacturer was concerned about its potential liability of damage to crops and contamination of water supplies. Picloram was widely used in cattle range for controlling gorse. However, after DBCP, EDB and atrazine were discovered in water supplies, there was a growing concern about picloram. Picloram is a very potent auxin type herbicide. It was used in Guam for controlling bunchy top in bananas. A single kebob spear soaked in picloram was sufficient to wipe out an entire mat of bananas. The label has a crop rotation restriction of 36 months followed by field bioassay (see label for Tordon 22K, EPA Reg. No. 62719-6, crop rotation section beginning page 11) for sensitive broadleaf crops to identify picloram residues. How is an inspector to enforce that label requirement?

The annual permit was enacted so that restricted pesticide sales records could be compared with an annual use permit which would specify sites, amounts and frequency of picloram use. The regulatory agency would have a record of the use of this potent herbicide and could review the application site prior to issuing a permit to define areas where application would be prohibited to protect resources (streams, gulches and other sensitive areas and crops).

Other chemicals were to be added if persistent, mobile, extent of use and potential for damage indicated concerns. Key indicators of persistence are a crop rotation interval, or field bioassay suggestion on the label.

Examples:

Aminopyralid, Milestone(R), EPA Reg. No. 62719-519, page 2, Field Bioassay after one year.

Clopyralid, Lontrel(R), EPA Reg. No. 62719-305, page 9, Crop Rotation Requirements 10.5-18 months.

Chlorantraniliprole, Coragen(R), EPA Reg. No. 352-719, page 14, 12 months for crops not listed on the label. (This product was classified as a restricted-use pesticide in Hawaii).

There are many other products with crop rotation restrictions. Reviewing labels for crop rotation restrictions and field bioassays should trigger a review to determine whether or not an annual permit should be required. This would assist farmers and land managers, including the private land owners who lease lands, the Agribusiness Develop Corporation, the Department of Agriculture and the Department of Land and Natural Resources and others in making management decisions on pesticides applied.

The new process on the restricted pesticide list from the rules should also apply to pesticides subject to annual permits. The process is sufficiently robust and transparent to allow public comment, and not just regulated industries and agencies.

Licensed products:

Brodifacoum: 22 products have been licensed in Hawaii that contain brodifacoum. These products contain from 25 ppm to 50 ppm poison and are primarily for use in and around buildings. There is a significant hazard to domestic animals from secondary poisoning. Cats or dogs may consume dead or lethargic rats and mice. Brodifacoum baits are not restricted, and thus applicators are not required to have knowledge about labels, safe practices, and identifying hazards. Consideration should be given to restrict all products with brodifacoum due to secondary hazards.

There have been inquiries concerning brodifacoum use for conservation use in Hawaii. New Zealand allows brodifacoum for conservation use. The public is warned about hazards from eating game after brodifacoum bait is applied. For example, there is a caution against hunting pigs from the treated area, and an area 5 kilometers surrounding the treated area for 5 years.

[Link to NZ map explanation concerning vertebrate poisons.](#)

If there is an episodic mouse population explosion, will brodifacoum be considered. It will be difficult to allow its use for conservation, yet not allow its use to protect the tourism industry. Zinc phosphide was used for mouse control in the past. Brodifacoum use around the Kona resorts may impact the endangered Hawaiian crow.

The rules should be sufficiently flexible to allow a system similar to New Zealand's to be developed for brodifacoum uses, including marine ecosystems - but some marine animals forage further than the 5 kilometers recommended for pigs, so if baits enter marine ecosystems how large an area should fishermen be concerned?

The rules must be robust so that invasive species concerns can be addressed and the public health, and other endangered species are not compromised.

Chlorine gas: What is under consideration for this toxic pesticide?

Chloropicrin: The agricultural use of chloropicrin is restricted. It is used in combination with dichloropropene, methyl bromide or other fumigant. However, its use for structural pest control changed. Chloropicrin for structural fumigation was a registered pesticide. The registration status changed when the manufacturer did not want to develop hazard information for the structural use, thus, its national status changed. Chloropicrin use as a warning agent continues to be required, but without some method of tracking its use and distribution, it would be extremely reckless to continue the use of Sulfuryl Fluoride, or other fumigant which requires that a warning agent.

A mechanism to continue to regulate chloropicrin use as a warning agent should be proposed. The alternative should be to cancel the use of any fumigant requiring use of a warning agent.

The USDA program concerning pesticide applicator records for private applicators was not funded after federal fiscal year 2013. One of the requirements was that medical personnel have access to pesticide records. This may be redundant of the Worker Protection Standard requirements, but access to records by medical professionals treating a worker should be evaluated to determine if the USDA requirements are addressed in the proposed rules.

The administrative procedures to classify products the state proposes for restricted use and annual permits should be in place so that the registrants and interested public and private parties can comment on proposals.

Has a regulatory impact analyses been prepared? I could not locate it.

Thank you for the opportunity to comment.

Robert Boesch  
Visiting Colleague  
University of Hawaii, College of Tropical Agriculture and Human Resources

## McHugh, John

---

**From:** Stephanie Ann Binns <sbinns@pestfacts.org>  
**Sent:** Thursday, November 8, 2018 12:52 PM  
**To:** HDOA.PB  
**Subject:** Testimony - Proposed Amendments to Administrative Rules Relating to Pesticides  
**Attachments:** RISE\_Hawaii Pesticide Regulation Changes FINAL.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hello,

Please see our comments, attached, on the proposed amendments to Hawaii's administrative rules relating to pesticides.

Thank you,

Stephanie Binns  
Regulatory Affairs Manager  
RISE, Responsible Industry for a Sound Environment  
(202) 872-3862



Responsible Industry for  
a Sound Environment®

November 8, 2018

Mr. Scott Enright, Chairperson  
Hawai'i Department of Agriculture  
1428 S. King St.  
Honolulu, HI 96814

Re: Proposed Amendments to Administrative Rules Relating to Pesticides

*Submitted via email to HDOA.PB@hawaii.gov.*

Dear Chair Enright:

Thank you for the opportunity to provide comments to the Hawai'i Department of Agriculture (HDOA) on its proposed changes to Chapter 4-66 of the Hawai'i Administrative Rules, Pesticides. We appreciate HDOA's work to consider the needs of all stakeholders as it finalizes these regulations.

Of the numerous changes in its proposal, the increase in pesticide registration and other fees is of particular concern to our members. We understand registration fees are needed for the efficient and effective operation of the Pesticides Branch, and we support modest fee increases that will contribute to this. However, tripling the pesticide registration fee will add substantial costs for companies that sell products in Hawai'i. Doubling all other pesticide fees will also affect applicators, dealers, and other stakeholders who need licenses or certifications to conduct business. Increased regulatory fees can be challenging for pesticide registrants, particularly small businesses, that may have many product registrations and tight budgets. Fee increases can put financial pressure on companies and lead to increased prices for pesticide product consumers and applicators. It is important that HDOA fully consider these potential effects.

We appreciate that HDOA has not raised pesticide fees since 2006 and that additional fees will be used to support training, education, product registration, and other programs. We support the use of fees for such purposes within the Department's purview; for example, to provide training and support for the newly created commercial applicator Category 1(C) (fumigant pest control), and to support the disposal of unwanted pesticides, as described in §4-66-55(c). We ask HDOA to ensure that the funds collected through increased fees do not exceed the maximum amount allowed for the Pesticide Use

Revolving Fund. It is important that fees collected by the Pesticide Branch continue to benefit the stakeholders who contributed them, and as a result, they should not be transferred to the state of Hawaii's General Fund.

In addition, we support the protection of confidential business information (CBI) as HDOA considers revisions to its regulations, particularly those around experimental pesticide use. The proposed amendment to §4-66-47, which details exceptions to experimental use permits, requires written notification to HDOA in order to conduct certain limited field trial use of a substance without an experimental use permit. However, it does not explain how CBI will be protected in this process. We suggest that HDOA offer a more detailed explanation of this notification process for stakeholder feedback to ensure it adequately protects CBI.

We ask that the Pesticides Branch reconsider the proposal in §4-66-60 to increase, from fourteen to thirty calendar days prior to the date of a training class, the amount of time required for approval of certification credits. While we understand the Pesticide Branch needs time to review training certification requests, we are concerned that the increased timeframe could discourage training opportunities.

We are also concerned about the proposal to add tax map key numbers (TMKs) in §4-66-62(c)14 to the recordkeeping requirements for the application of restricted use pesticides (RUPs). Looking up TMKs is difficult and time-consuming, and they are not always accurate locators in cases where properties are part of a large TMKs or span multiple TMKs. We believe the current requirement to provide the address or location of the treated site is sufficient.

Finally, we note that the definition of "school" in the proposed §4-66-64.2 is overly broad and could be construed to include home schools and charter schools, and we suggest HDOA clarify the definition to address this. We also recommend that there be an exemption for the application of restricted use pesticides to control pests that pose a threat to public health and safety.

Thank you for reviewing our comments on HDOA's proposal to update its pesticide regulations. We ask that the department keep in mind the effects the proposed changes will have on stakeholders, particularly pesticide users and registrants. Please contact us with any questions or for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Hobbs". The signature is written in a cursive style with a horizontal line underneath the name.

Aaron Hobbs  
President

RISE, Responsible Industry for a Sound Environment  
1156 15th Street, NW  
Suite 400  
Washington, DC 20005  
(202) 872-3860

---

RISE is a national not-for-profit trade association representing more than 220 producers and suppliers of specialty pesticide and fertilizer products to both the professional and consumer markets. RISE member companies manufacture more than 90 percent of domestically produced specialty pesticides used in the United States, including a wide range of products used on lawns, gardens, sport fields, golf courses, and to protect public health.

## McHugh, John

---

**From:** Jeff Jensen <jjensen@gcsaa.org>  
**Sent:** Monday, November 5, 2018 5:23 AM  
**To:** HDOA.PB  
**Subject:** §4-66-62 part d "Testimony"  
**Attachments:** HI Dept. of Ag 11.05.18.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Hawaii Department of Agriculture:

Attached you will find testimony regarding proposed pesticide administrative rules (§4-66-62 part d). Thank you for your time and consideration.

Sincerely,

**Jeff Jensen** | Field Staff, Southwest Regional Representative  
Golf Course Superintendents Association of America  
1421 Research Park Drive | Lawrence, KS 66049  
800.472.7878, ext. 3603 | 785.832.3603 Direct | 785-840-7879 Cell  
[www.gcsaa.org](http://www.gcsaa.org) | [www.eifg.org](http://www.eifg.org) | [FACEBOOK](#) | [TWITTER](#)





November 5, 2018

Hawaii Department of Agriculture  
Pesticides Branch  
1428 S. King St.  
Honolulu, HI. 96814

**Subject:** Proposed pesticide administrative rules (§4-66-62 part d)

Dear Hawaii Department of Agriculture:

The Golf Course Superintendents Association of America (GCSAA) represents 18,000 members nationwide and abroad and 99 affiliated chapters. One of those chapters is the Hawaii Golf Course Superintendents Association that serves the state's nearly 100 golf facilities providing a unified voice for the golf maintenance industry.

\*\*\*\*\*

I am writing you today concerning the language in the proposed pesticide administrative rules (§4-66-62 part d).

The text in the proposed rules does not reflect the text of Act 45 for restricted pesticide use reporting and should be modified to match the wording of Act 45.

Further, in the same section and as per the wording of Act 45, it should be clarified in the proposed rules that there will be two separate reports. One report with information from restricted use pesticide users submitted to Hawaii Department of Agriculture for department use only, and the other provided by Hawaii Department of Agriculture for the public that is a summary of the collected information.

I thank you for your time and consideration concerning the requests and if you have any questions, please don't hesitate to contact me.

Sincerely,

Jeff Jensen  
Southwest Field Staff Representative (Arizona, California, Hawaii, Nevada)  
Golf Course Superintendents Association of America  
1421 Research Park Dr.  
Lawrence, KS 66049  
(785) 840-7879  
[jjensen@gcsaa.org](mailto:jjensen@gcsaa.org)

## McHugh, John

---

**From:** Emmanuel Zibakalam <emmanuel@bettercropshawaii.com>  
**Sent:** Thursday, November 8, 2018 3:45 PM  
**To:** HDOA.PB  
**Cc:** Bennette Misalucha  
**Subject:** HCIA Testimony Regarding Proposed Pesticide Rules Amendments  
**Attachments:** HCIA Comments on Proposed Pesticide Rules Amendments.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Aloha,

Please find attached the Hawaii Crop Improvement Association's (HCIA) comments on the proposed Pesticide Rules amendments.

If you have any questions, please contact me at your convenience.

Sincerely,



**Emmanuel Zibakalam**  
**Program Director**  
**Hawaii Crop Improvement Association**  
**(808) 741-8390**  
[www.bettercropshawaii.com](http://www.bettercropshawaii.com)

This message is for the designated recipients only and may contain confidential or proprietary information. If you have received it in error, please notify sender immediately and delete. Copying, forwarding or any other use is prohibited.



# HAWAII CROP IMPROVEMENT ASSOCIATION

**HCIA 2018 - 2020  
Board of Directors**

November 5, 2018

**President**

Joshua Uyehara

**Vice-President**

Warren Mayberry

**Secretary**

Dawn Bicoy

**Treasurer**

Laurie Yoshida

**Directors-at-Large**

Alan Takemoto

Adolf Helm

Leslie Campaniano

Dan Clegg

Gene Harrington

**President Emeritus**

Alan Takemoto

**Executive Director**

Bennette Misalucha

**OUR MISSION**

HCIA is a Hawaii-based non-profit organization that promotes modern agriculture to help farmers and communities succeed. Through education, collaboration and advocacy, we work to ensure a safe and sustainable food supply, support responsible farming practices and build a healthy economy.

BOARD OF AGRICULTURE  
Hawaii Department of Agriculture  
1428 South King Street  
Honolulu, HI 96814  
Phone: (808) 973-9404  
Fax: (808) 973-9418

Dear Chair Enright and Board Members,

The Hawaii Crop Improvement Association (HCIA) respectfully submits the following comments regarding the adoption of amendments to HAR Chapter 4-66, specifically, amendments pertaining to compliance with Act 45.

We assert that portions of the proposed amendments do not reflect the language and/or intent as detailed in Act 45. Specifically, the amendments to HAR Chapter 4-66-62 (d),

“Every user of restricted use pesticides shall submit to the Department, for departmental use, no later than January 30th of the following year, all restricted use application records for the preceding calendar year on forms provided by the Head.”,

go beyond the reporting requirements as described in Act 45. The proposed amendment requires the submission of all restricted use pesticide application records to the Hawaii Department of Agriculture. The current accepted standard of practice requires users to keep records on premise, available for inspection by HDOA, as requested, Act 45 requires the submission of

- (1) a listing, by federal and state registrations or permit numbers, commercial product names, and active ingredients, of all restricted use pesticides used;
- (2) the total quantities used for each restricted use pesticide;
- (3) a general description of the geographic location including, at a minimum, the tax map key number, at which the restricted use pesticides were used; and
- (4) the date on which the restricted use pesticide application occurred.

In the restructuring of the HAR Chapter 4-66-62 text and as per the wording of Act 45, it should be clarified in the proposed rules that there will be two separate reports. One with information from restricted use pesticide users submitted to Hawaii Department of Agriculture for department use only, and the other provided by Hawaii Department of Agriculture for the public that is a summary of the collected information.



## HAWAII CROP IMPROVEMENT ASSOCIATION

Additionally, HCIA is concerned about the privacy and safety of our member employees. The proposed amendments to HAR Chapter 4-66-62 (d) compromise the privacy of personal information and could subject employees to undue harassment and other forms of persecution.

It is for these reasons that we ask you to review and edit the proposed amendments to HAR Chapter 4-66-62. If you have any questions, please contact me at your convenience. Mahalo for your time and consideration.

Sincerely,

*Bennette Misalucha*

Executive Director, Hawaii Crop Improvement Association

## McHugh, John

---

**From:** Ryan Tagomori <Ryan@bfrhawaii.com>  
**Sent:** Thursday, November 8, 2018 3:05 PM  
**To:** HDOA.PB  
**Cc:** Anthony F. Quan Jr.; Gladys Ripley; Liz Deluna; Margery Bronster; Rex Fujichaku; Suzanne Zablan; Amanda Maizel  
**Subject:** TESTIMONY BY CROPLIFE AMERICA - PROPOSED AMENDMENTS TO ADMINISTRATIVE RULES RELATING TO PESTICIDES  
**Attachments:** CLA HI Comments 11.08.18.pdf  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Sir or Madam:

Please find attached the **TESTIMONY** by CropLife America pursuant to the Notice of Public Hearing, Department of Agriculture, Proposed Amendments to Administrative Rules Relating to Pesticides.

If you are unable to open the attachment or have any questions, please contact us.

Thank you,

Ryan Tagomori  
Legal Assistant to Rex Y. Fujichaku, Esq.  
BRONSTER FUJICHAKU ROBBINS  
1003 Bishop Street, Suite 2300  
Honolulu, HI 96813  
Tel: (808) 524-5644  
Fax: (808) 599-1881  
[www.bfrhawaii.com](http://www.bfrhawaii.com)

### CONFIDENTIAL COMMUNICATION

This e-mail message and any attachments are intended for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you receive this e-mail in error, please immediately notify the sender by replying to this e-mail message or by telephone, delete this e-mail from your computer, and destroy any printed copies. Thank you.

**TAX ADVICE:** Under applicable Treasury Regulations, we are required to inform you that any advice contained in this e-mail or any attachment hereto is not intended or written to be used, and cannot be used, to avoid penalties imposed under the Internal Revenue Code.

### Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).



November 8, 2018

Board of Agriculture  
Hawaii Department of Agriculture  
1428 South King Street  
Honolulu, HI 96814  
Phone: (808) 973-9404  
Fax: (808) 973-9418

Dear Chair Enright and Board Members,

CropLife America (CLA) appreciates the opportunity to submit the following comments regarding the adoption of proposed amendments to HAR Chapter 4-66.

CLA is a national trade association that represents the manufacturers, formulators and distributors of pesticides. CLA's member companies produce, sell and distribute virtually all the vital and necessary crop protection and biotechnology products used by farmers, ranchers and landowners.

Our comments are framed by two overarching principles. First, CLA believes that the proposed rule amendments should be based on the principles of sound science. For example, the proposed rule amendment for Section 32.1 recognizes 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." [Emphasis added.] The rules overall should be guided by the precept that sound science and objective, predictable standards must inform all decision-making and enforcement under these rules. To that end, CLA recommends that Section 1, "Objectives", be amended to explicitly provide that the interpretation and enforcement of these rules will be based on sound science.

Second, the proposed rule amendments should recognize the proper treatment of the confidential business information (CBI) of pesticide users, dealers, applicators and others who are required to submit information to the Department under these rules. Both Hawaii federal and state courts have recognized that CBI that is required by law to be provided to the government must be protected from unwarranted disclosure to competitors and the others who may use such information for improper uses. The proposed rule amendments should institute safeguards to protect CBI from unwarranted disclosure as provided by the Uniform Information Practices Act (UIPA), HRS Chapter 92F, and other relevant federal and state laws.

Our following comments are guided by these principles. These comments reflect our members' primary concerns, but do not constitute an exhaustive list. We hope that our comments will spur thoughtful consideration as the proposed rule amendments are evaluated.

**Representing the Crop Protection Industry**

1156 15th St. N.W., Suite 400 Washington, D.C. 20005 • 202.296.1585 phone 202.463.0474 fax [www.croplifeamerica.org](http://www.croplifeamerica.org)

**Section 32 (Restricted Use Pesticides).** CLA is concerned about the removal of the rulemaking requirement for adding (or subtracting) a pesticide to the Restricted Use Pesticides (RUP) list without instituting due process safeguards. While CLA appreciates that the existing process for designating a pesticide by rulemaking has been found to be unwieldy in the past, we are concerned about the designation of a pesticide as an RUP without sufficient input and opportunity for comment by affected users and other stakeholders during the Hawaii Department of Agriculture (HDOA) internal review. HDOA's internal review process needs to indicate the registrant's written acceptance of the State Restricted Use designation, and the registrant's willingness to continue with the process for public review and comment, as specified in the internal process. A measure that may alleviate the opacity of the internal review process would be to include, in the rule itself, the "Hawaii Department of Agriculture Internal Review Process" that is contained in the "Explanation of Revisions" for the proposed rule amendments. In addition, HDOA should post its internal review process, along with all required forms, on its website.

It is also unclear what happens in the interim once the existing RUPs are taken out of the rule and placed on the internal department list. We assume that the existing RUPs will be grandfathered to the list, but it is not clearly stated that such grandfathering will occur.

**Section 47 (Experimental use permits; exceptions).** The proposed rule amendment for this section would allow laboratory or limited quarter-acre field trial use of a substance under certain conditions without an experimental use permit if written notification is given to the Head. CLA is concerned that the proposed rule amendment does not explicitly provide for CBI protection for the information contained in the written notification required under this section. CLA proposes that the CBI protection be explicitly recognized under HRS Chapter 92F and other relevant law. In addition, especially in light of the proprietary experimental use nature of this information, the rule should explicitly provide the affected party notice and an opportunity to comment on any anticipated public disclosure of the information provided in the written notification.

Moreover, the content and the information requested to be contained in the required form by the Head should be narrowly tailored to minimize the possibility of unauthorized CBI disclosure. Measures should be taken to allow input and comment on the prescribed form. The same opportunity for input and comment should be allowed for the prescribed forms required under Section 52 (RUP dealer and dealer representative), Section 60 (Certification procedures; certificate renewal), Section 62 (Certified pesticide applicator recordkeeping), Section 63.1 (Annual use permit), and Section 64 (Conditions and limitations on aerial application of RUPs).

Timing of when the written notification to the Head must be submitted should also be clarified.

**Section 54 (Storage, display, and sale of pesticides).** CLA is generally concerned whether the proposed retailer pesticide warning sign requirements are feasible. For example,

how will the sufficiency of the information regarding “the proper handling, storage, and disposal of all pesticides sold” be determined?

**Section 57 (General standards for certification of applicators); Section 58 (Specific standards for certification of applicators); Section 60 (Certification procedures; certificate renewal).** CLA is generally concerned whether the proposed RUP applicator certification requirements may be too rigorous. To be sure, CLA supports reasonable measures to protect the health and safety of pesticide applicators and those who may be affected by pesticide use. However, the proposed requirements should be tailored to address legitimate certification needs without being overly burdensome.

**Section 62 (Certified pesticide applicator recordkeeping).** The certified applicator recordkeeping rule is confusing and ambiguous. For example, subsection (i) says the Department will produce a summary on the “information submitted in accordance with subsections (c) and (d)” but subsection (c) does not impose a reporting obligation – it only imposes record keeping obligations. The reference to (c) in subsection (i) should be deleted.

More significantly, subsection (d) requires applicators to submit, by January 30<sup>th</sup> of each year, information on the previous year’s RUP activities using “forms provided by the Head.” Those forms are not available yet, so it is not clear what information the Department will want submitted. As stated above, measures should be taken to allow input and comment on the prescribed form and then the final form should be made available for at least 30 days prior to implementation. The rule should also make clear that the annual report by a certified private applicator may be submitted by either the individual applicator or the applicator’s employer, if that is the intent.

It is also unclear whether the RUP reports to be submitted to the Department in January “for departmental use” will be reported on a website or only available through a UIPA request. Similar to other proposed rule amendments, CLA proposes that the CBI protection be explicitly recognized under HRS Chapter 92F and other relevant law. In addition, the rule should explicitly provide the affected party notice and an opportunity to comment on any anticipated public disclosure of the information provided in the RUP reports.

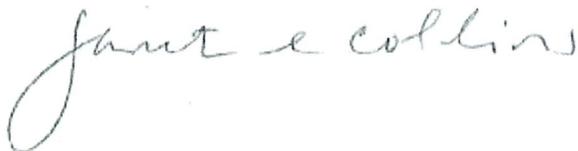
**Section 63.1 (Annual use permit).** Similar to our concerns regarding the proposed rule amendments for RUPs, CLA is concerned about the removal of the rulemaking requirement for adding (or subtracting) a pesticide from the annual use permit list without instituting due process safeguards. While CLA appreciates that the existing process for designating a pesticide on the annual use permit list by rulemaking has been found to be unwieldy in the past, we are concerned about the designation of a pesticide on the annual use permit list without sufficient input and opportunity for comment by affected users and other stakeholders during Departmental internal review. Again, the “Hawaii Department of Agriculture Internal Review Process” that is contained in the “Explanation of Revisions” for the proposed rule amendments should be included in the rule itself.

**Section 66.1 (Enforcement action and penalty assessment schedule); Appendix A.**

CLA is generally concerned about the new penalty assessment schedule referenced in Section 66.1 and contained in Appendix A. In addition to the general restrictions on pesticide use throughout the rules, Section 51 (Experimental use permits; monitoring and revocation), Section 53 (Dealers' records and reports), Section 61 (Conditions on the use of RUPs by non-certified applicator), Section 62 (Certified pesticide applicator recordkeeping), and Section 64 (Conditions and limitations on aerial application of RUPs) include proposed rule amendments which add provisions for penalties as provided by law. While CLA appreciates that, under certain circumstances, penalties for noncompliance with the rules are warranted, we want to ensure that any penalty applied is appropriate. CLA is especially concerned about the appropriateness of the levels and amounts of the penalties contained in Appendix A. Suitable input and comment by stakeholders should be considered before the penalties are finalized.

As stated above, these comments are not exhaustive, but illustrative of the issues CLA believes must be addressed before the proposed rule amendments take their final form. If you have any questions, please contact me at your convenience. Thank you for your time and consideration.

Sincerely,



Janet E Collins, Ph.D., R.D., CFS  
Executive Vice President, Science and Regulatory Affairs  
CropLife America  
1156 15th Street, NW  
Suite 400  
Washington, DC 20005  
Phone: 1-202-833-4474

## McHugh, John

---

**From:** Sean O'Keefe <sokeefe@abhi.com>  
**Sent:** Thursday, November 8, 2018 3:29 PM  
**To:** HDOA.PB  
**Cc:** McHugh, John  
**Subject:** Testimony - A&B comments on ammendments to HAR 4-66  
**Attachments:** Xerox - Scan.pdf; 2018 HAR 4-66 comments ABDA (locked).docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Our comments are attached. I included an (unsigned) Word version in case the scan is blurry. Hard copy will also be mailed.

Sean

-----  
This message, including any attachments, is intended for the use of the party to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately by reply e-mail, and delete the original and any copies of this message. It is the sole responsibility of the recipient to ensure that this message and any attachments are virus free.  
-----

This message, including any attachments, is intended for the use of the party to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately by reply e-mail, and delete the original and any copies of this message. It is the sole responsibility of the recipient to ensure that this message and any attachments are virus free.



ALEXANDER & BALDWIN  
PARTNERS FOR HAWAII

November 8, 2018

Mr. John McHugh, Ph.D.  
Hawaii Department of Agriculture  
Pesticides Branch  
1428 South King Street  
Honolulu, Hawaii 96814

**Subject: Testimony on Proposed Amendments to Hawaii Administrative Rules  
Relating to Pesticides**

Dear Dr. McHugh:

Thank you for the opportunity to provide input on the proposed amendments to Hawaii Administrative Rules (HAR) Chapter 4-66, Pesticides.

Alexander & Baldwin, LLC Series T (A&B), through its Diversified Agriculture division, is pleased to offer the following comments regarding the proposed amendments.

Section 4-66-32, Restricted use pesticides

A&B strongly supports the proposed changes to §4-66-32 which clarify the criteria and process for evaluating and classifying pesticides as state restricted use and streamlines the implementation of such classification once it has been deemed appropriate for a particular product or use.

Under the current rules, once a pesticide or pesticide use has been evaluated by the Department of Agriculture (the Department) and approved by the Board of Agriculture (the Board) for restricted use classification, an amendment to HAR Chapter 4-66 must be completed before the pesticide or pesticide use can actually be registered for restricted use. This is because the list of state restricted use pesticides is currently contained in the rule (§4-66-32(e)). Because rulemaking is a costly, time-consuming, and therefore infrequent<sup>1</sup> process, this can introduce significant delays in the introduction of new chemistries which may be safer and more effective than the products they would replace. Similarly, when the Department conducts an evaluation of an existing pesticide use under §4-66-32.1 and determines that classification as state restricted use is appropriate to address potential unreasonable adverse effects to humans or the environment, the need to go through rulemaking may delay implementation of that decision.

---

<sup>1</sup> The amendments currently being proposed would be the first amendments to HAR Chapter 4-66 since December 2006.

By removing the list of restricted use pesticides from the rule, the proposal would allow the decision to classify a pesticide or pesticide use as state restricted use to be implemented in a much more timely manner, since the classification would become effective immediately upon approval of the Board rather than having to go through rulemaking.

Importantly, the proposal would not in any way limit the ability of registrants to participate in the process, since the Department's evaluation would occur either as part of the initial licensing of the product (a process during which the applicant works closely with the Department to provide information necessary to establish that the product can perform its intended function without unreasonable adverse effects on humans or the environment) or under §4-66-32.1 (which allows interested parties an opportunity to submit additional information and comment on the evaluation). Equally important, the opportunity for members of the public to comment upon a proposed classification for state restricted use will be retained since the Board must still approve the classification and all meetings of the Board are open to the public. Finally, the proposal would align the state's process for restricted use classification with the analogous federal process, which is accomplished administratively by U.S. EPA and not through rulemaking.

#### Section 4-66-62, Certified pesticide applicator recordkeeping

Amendments to §4-66-62 have been proposed, in part, to implement the requirements of Act 45, passed by the Hawaii Legislature during the 2018 legislative session. Act 45 requires that users of restricted use pesticides must "submit to the department, *for departmental use*, an annual report of all use of restricted use pesticides" (emphasis added).

Act 45 further provides that the annual report must include the following information:

- (1) A listing, by federal and state registrations or permit numbers, commercial product names, and active ingredients of, of all restricted use pesticides used;
- (2) The total quantities used for each restricted use pesticide;
- (3) A general description of the geographic location, including, at minimum, the tax map key number, at which the restricted use pesticides were used; and
- (4) The date on which the restricted use pesticide application occurred.

Finally, Act 45 requires that the Department "shall produce a summary, *for public disclosure*, by county" (emphasis added) that includes the following information:

- (1) The total quantities used, by federal and state registrations or permit numbers, commercial product names, and active ingredients, for each restricted use pesticide uses; and
- (2) The amount of area in the county in which the restricted use application occurred.

The proposed amendments depart from the requirements of Act 45 in two ways.

The first departure from Act 45 is that the proposed §4-66-62(d) requires "every user of restricted use pesticides shall submit to the department, for department use, no later than January 30<sup>th</sup> of the following year, *all* restricted use application records for the preceding calendar year on forms provided by the Head" (emphasis added). The restricted use application records required to be maintained by certified pesticide applicators are listed in §4-66-62(c) and include 14 different items, plus "any other information the head deems necessary". The proposed rule

appears to require – at minimum - that certified applicators submit all of the records required to be maintained under §4-66-62(c), which is a far more extensive reporting requirement than that contained in Act 45.<sup>2</sup> The reference in §4-66-62(i) to “information submitted in accordance with subsections (c) and (d)” would seem to emphasize that *all* restricted use pesticide records required under subsection (c) are to be reported under subsection (d).

Based upon review of a draft of the Department’s proposed Annual Restricted Use Pesticide Reporting Form, it appears it was not the Department’s intent that “all restricted use application records for the preceding calendar year” should be submitted.<sup>3</sup> However, this intent is not reflected in the rule as written, and the draft form would not comport with the rule as written.

Information required to be reported under Act 45 includes the recordkeeping information listed in Subsections 4-66-62(c)(1), (2), (4), (7), (8), (9) (date only), and (14). Also required to be reported under Act 45 is the state registration number for each restricted use pesticide, which is not among the restricted use pesticide records required to be maintained under §4-66-62(c) and therefore would not be required to be reported under the proposed rule.<sup>4</sup> Information listed in Subsections 4-66-62(c)(3), (5), (6), (10), (11), (12), and (13) are all “restricted use application records” that are not required to be reported under Act 45 but would be required to be reported under the proposed §4-66-62(d).

To conform the proposed rule to Act 45, A&B recommends that §4-66-62(d) be revised to require only the restricted use pesticide application records required under Act 45 to be included in the annual report. The most efficient way to do this would be to insert the language taken directly from Act 45 cited above, changing §4-66-62(d) to read as follows:<sup>5</sup>

- (d) Every user of restricted use pesticides shall submit to the department on forms provided by the Head, for department use, no later than January 30<sup>th</sup> of the following year, the following restricted use application records for the preceding calendar year.*
- (1) A listing, by federal and state registrations or permit numbers, commercial product names, and active ingredients of, of all restricted use pesticides used;*
  - (2) The total quantities used for each restricted use pesticide;*
  - (3) A general description of the geographic location, including, at minimum, the tax map key number, at which the restricted use pesticides were used; and*
  - (4) The date on which the restricted use pesticide application occurred.*

---

<sup>2</sup> The reporting requirement under the proposed §4-66-62(d) may actually be interpreted even more broadly, since some applicators may retain “restricted use application records” that are more extensive than those required by the regulation, such as maps of the application area.

<sup>3</sup> The draft reporting form does include two items not required to be reported under Act 45 (time applied and pest/crop treated), but otherwise conforms to Act 45 requirements.

<sup>4</sup> The draft reporting form also omits this information.

<sup>5</sup> Another option would be to replace the phrase “all restricted use application records” with “restricted use application records required under subsections (c)(1), (2), (4), (7), (9), and (14)”. This would still include some information not required under Act 45 (i.e., time of application listed under (c)(9)) and would not address the omission of the state registration number from the reporting requirement, so may not be the best option.

The second departure from Act 45 is in the proposed §4-66-62(i), which requires the Department to “produce a summary from information submitted in accordance with subsections (c) and (d)”. In addition to the problem described above with respect to the reference to subsection (c), the language here differs from Act 45 by omitting the phrase “for public disclosure, by county” found in the Act. The effect of this omission is three-fold.

Firstly, since §4-66-62(i)(1) also does not include the phrase “by county”, the rule actually does not require the Department to summarize this information “by county”, which is contrary to the language and intent of Act 45. As written, only “the amount of area in the county in which the restricted use application occurred” would need to be broken down by county. Secondly, by omitting the phrase “for public disclosure”, the rule actually does not require the Department to make the summary available to the public, only to produce it, which is contrary to Act 45. Finally, by omitting the phrase “for public disclosure”, the rule blurs the clear distinction made in Act 45 between information which the Legislature intended to be “for public disclosure” and information that the Legislature intended to be “for departmental use” only.

Section 4-66-62(i) should be revised so that it comports with the language and intent of Act 45. Suggested language is provided below.

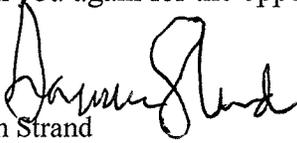
- (i) The Department shall produce a summary, for public disclosure, by county, from information submitted in accordance with subsection (d) which includes:*
  - (1) The total quantities used, by federal and state registrations or permit numbers, commercial product names, and active ingredients, for each restricted use pesticide uses; and*
  - (2) The amount of area in the county in which the restricted use application occurred.*

Note that the reference to subsection (c) has been intentionally deleted from the above recommended language for reasons provided earlier. Because the reporting requirement is contained entirely in subsection (d), including reference to subsection (c) here is superfluous in addition to being problematic.

In support of our comments above on Section 4-66-62, we would like to call your attention to the discussion at the September 25, 2018 meeting of the Board of Agriculture, at which the Board approved to go to public hearing the additional revisions to HAR Chapter 4-66 necessary to implement Act 45. At that hearing, several Board members expressed concern that the proposed revisions should not go beyond the requirements of Act 45 and that the language of the proposed rule should be consistent with that in Act 45. While some specific changes to the proposal were discussed at the hearing and were subsequently addressed in the proposed rule (specifically, to §4-66-62(d)), the rule continues to include significant deviations from Act 45 as described above. According to the materials provided to the Board by the Department, Department staff stated at a meeting of the Governor’s Advisory Committee on Pesticides (held on September 6, 2018 to discuss the proposed Act 45 changes) that “Section 4-66-62(i) should be changed to match the language of Act 45 Hawaii Session Laws (2018) verbatim”. Similar statements were made at the Board meeting. Given the expressed intent of the Department, the Advisory Committee on Pesticides, and the Board that the proposed rule language should match the

language of Act 45, we believe the proposed deviations from the language and intent of Act 45 are simply drafting errors and strongly encourage the Department to rectify these deviations in the final rule.

Thank you again for the opportunity to comment.

A handwritten signature in black ink, appearing to read "Darren Strand". The signature is fluid and cursive, with a large initial "D" and "S".

Darren Strand  
General Manager, Diversified Agriculture  
Alexander & Baldwin, LLC Series T



P.O. Box 253, Kunia, Hawai'i 96759  
Phone: (808) 848-2074; Fax: (808) 848-1921  
e-mail [info@hfbf.org](mailto:info@hfbf.org); [www.hfbf.org](http://www.hfbf.org)

November 8, 2018

Mr. John McHugh, Ph.D.  
Hawaii Department of Agriculture  
Pesticides Branch  
1428 South King Street  
Honolulu, Hawaii 96814

**Subject: Testimony - Proposed Amendments to Administrative Rules  
Relating to Pesticides**

Dear Dr. McHugh:

Hawaii Farm Bureau (HFB) is pleased to have the opportunity to provide comments on the proposed amendments to Hawaii Administrative Rules (HAR) Chapter 4-66, Pesticides.

HFB's chief concern with the proposed rules is regarding the changes that are meant to implement Act 45, specifically those having to do with reporting of restricted use pesticide use and public reports by the Department of Agriculture (DOA). Our reading of the amendments identified some significant differences between what is required by Act 45 and what is required by the new regulation. During the recent Board of Agriculture meeting at which these changes were discussed, which I attended as a member of the Board, I believe there was broad agreement that the rules should not depart from the law, and that changes would be made to the rules where necessary to ensure it matches the law. Although some changes were made, there are still differences and these need to be corrected, most importantly in section 4-66-62(i), where essential language from the law has been left out, and section 4-66-62(d), where the amount of information required to be reported to DOA annually seems to be far more extensive than the law requires. Most importantly, the law was intended to make certain information available for DOA to use ("for departmental use") and other information available to the public ("for public disclosure"). By leaving out important language from the law in section 4-66-62(i), the rule is not at all clear that the information intended to be "for departmental use" will not be included in the annual summary reports. This may be an oversight, but needs to be fixed before the rule is made final.

HFB is also very concerned about the new "buffer zone" requirement that applies to restricted use pesticide use near schools. We understand that this requirement is in the law, and we do not object to the requirement itself. The problem is, how are farmers supposed to comply with it? Most anyone who lives and/or farms near a traditional public school probably knows that there is a school nearby and can use this information to comply with the buffer zone requirement. Some

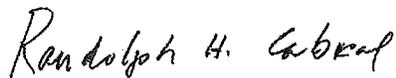
charter schools and small private schools, however, are not located on traditional school campuses and neighbors may not be aware that there is a school nearby. Most troublesome, however, are pre-schools, which can be almost anywhere. There are no public records that are "readily available" to farmers identifying the location of every pre-school near their farm, and the same is true for some private schools. Farmers should not be held responsible if they violate the buffer zone requirement because of a nearby school that they were not even aware of. HFB strongly encourages DOA, in cooperation with DOE, DCCA and other relevant state agencies, to develop the information necessary for farmers and other certified applicators to identify the locations of all schools relative to their farms or other application sites.

While well intended, HFB also objects to the new requirement that all certified applicator applicants, including private applicators, "shall possess a history of honesty, truthfulness, financial integrity, and fair dealing". I am sure we would all like to think that we possess these qualities, but how is DOA going to make this determination and enforce this requirement? Will they run background checks when someone applies for certification? Because this requirement is virtually unenforceable by DOA, it does not belong in the rules.

Finally, HFB would like to comment on the new written notification requirement under Section 4-66-47 having to do with exceptions from experimental use permits. We note that the terms of these exceptions are already far more restrictive in Hawaii than at the federal level. HFB understands that DOA has added this requirement to ensure that DOA is aware of where and when activities are being conducted under the exception so that they can verify that conditions of the exception are being met. The written notification is to be submitted to DOA "on forms prescribed by the head", and the information required to be included on that form is not specified. When experimental uses are conducted, whether under an experimental use permit or an exception, the information developed by the experimental use may be confidential in nature, and its disclosure may provide an unfair advantage to competitors. In some cases, under the current rule, this may be a motivation to conduct the experimental use under the exemption rather than having to provide extensive information in an application that could become a public record accessible by competitors. Without knowing what will be required to be on the "forms prescribed by the head", it is not possible to assess whether confidential information may be required to be disclosed on the forms. Rather than an open-ended notification "on forms prescribed by the head", a simple letter notification stating that an experimental use is planned for a particular time and place and providing contact information should be adequate to meet DOA's intent. Additional information could then be provided verbally to DOA by the contact.

Again, thank you for considering our comments on this important rule.

Mahalo,



Randy H. Cabral  
Hawaii Farm Bureau President