

DEPARTMENT OF AGRICULTURE

Amendment and Compilation of Chapter 4-66
Hawaii Administrative Rules

October 24, 2006

SUMMARY

1. §§4-66-2 to 4-66-4 are amended.
2. §4-66-7 is amended.
3. §§4-66-16 is amended.
4. §4-66-18 is amended.
5. §§4-66-20 to 4-66-24 are amended.
6. §4-66-25 is repealed.
7. §§4-66-28 to 4-66-32 are amended.
8. A new §4-66-32.1 is added.
9. §§4-66-34 to 4-66-36 are amended.
10. §§4-66-38 to 4-66-41 are amended.
11. §4-66-42 is repealed.
12. A new §4-66-42.1 is added.
13. §4-66-43 is amended.
14. §§4-66-45 to 4-66-48 are amended.
15. §§4-66-50 to 4-66-58 are amended.
16. §4-66-59 is repealed.
17. §§4-66-60 to 4-66-62 are amended.
18. §4-66-63 is repealed.
19. A new §4-66-63.1 is added.

20. §4-66-64 is amended.
21. §4-66-65 is repealed.
22. §4-66-66 is amended.
23. A new §4-66-66.1 is added.
24. Chapter 66 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 6 DIVISION OF PLANT INDUSTRY

CHAPTER 66

PESTICIDES

§4-66-1	Objectives
§4-66-2	Definitions
§4-66-3	Administration, enforcement, and penalty
§4-66-4	Contents of the pesticide label; generally
§4-66-5	Label; name, brand, or trademark
§4-66-6	Label; name and address of producer, registrant, or person for whom produced
§4-66-7	Label; net weight or measure of contents
§4-66-8	Label; product registration number
§4-66-9	Label; producing establishment registration number
§4-66-10	Label; ingredient statement; generally
§4-66-11	Label; position of ingredient statement
§4-66-12	Label; names to be used in ingredient statement
§4-66-13	Label; statements of percentages
§4-66-14	Label; accuracy of stated percentages
§4-66-15	Label; deterioration
§4-66-16	Label; inert ingredients
§4-66-17	Label; warnings and precautionary statements; generally
§4-66-18	Label; required front panel statements
§4-66-19	Label; other required warnings and precautionary statements
§4-66-20	Label; directions for use; generally

§4-66-21	Label; placement of directions for use
§4-66-22	Label; exceptions to requirement for directions for use
§4-66-23	Label; contents of directions for use
§4-66-24	Label; statement of use classification; generally
§4-66-25	Repealed
§4-66-26	Label; restricted use classification
§4-66-27	Label; prominence and legibility
§4-66-28	Label; language to be used
§4-66-29	Label; placement
§4-66-30	Label; false or misleading statements
§4-66-31	Label; final printed form
§4-66-32	Restricted use pesticides
§4-66-32.1	Evaluation of pesticide uses
§4-66-33	Pesticide licensing; exceptions
§4-66-34	Applications for licensing pesticides and approval of non-chemical pest control devices
§4-66-35	Pesticide licensing; effective date
§4-66-36	Pesticide licensing; corrections
§4-66-37	Special local need (SLN) registration
§4-66-38	Special local need; unreasonable adverse effects
§4-66-39	Special local need; label, packaging and coloration requirements
§4-66-40	Special local need; classification
§4-66-41	Special local need; notification and submission of data to Environmental Protection Agency
§4-66-42	Repealed
§4-66-42.1	Coloration of Pesticides
§4-66-43	Enforcement
§4-66-44	Notice of judgment
§4-66-45	Experimental use permits; generally
§4-66-46	Experimental use permits; prohibitions
§4-66-47	Experimental use permits; exceptions
§4-66-48	Experimental use permits; provisions for issuance

§4-66-49	Experimental use permits; restrictions
§4-66-50	Experimental use permits; reports
§4-66-51	Experimental use permits; monitoring and revocation
§4-66-52	Restricted use pesticide dealer
§4-66-53	Dealer's records and reports
§4-66-54	Storage, display, and sale of pesticides
§4-66-55	Disposal of pesticides and empty pesticide containers
§4-66-56	Certification of applicators
§4-66-57	General standards for certification of applicators
§4-66-58	Specific standards for certification of applicators
§4-66-59	Repealed
§4-66-60	Certification procedures
§4-66-61	Conditions on the use of restricted pesticides
§4-66-62	Certified pesticide applicator recordkeeping
§4-66-63	Repealed
§4-66-63.1	Annual Use Permit
§4-66-64	Conditions and limitations on pesticide application and sale
§4-66-65	Repealed
§4-66-66	Fees
§4-66-66.1	Proposed enforcement penalty guidelines
§4-66-67	Severability

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

§4-66-1 Objectives. The objectives of these rules are to implement the requirements of chapter 149A, Hawaii Revised Statutes, which provides for the registration, licensing, certification, recordkeeping, usage, and other activities related to the safe and efficacious use of pesticides. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

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

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

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

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

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

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

"Certification standard" means a requirement for certification.

"Changed use pattern" means a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are

not limited to, changes from nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

"Chemigation" means applying pesticides through irrigation systems.

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

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

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

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

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

"EPA" means the United States Environmental Protection Agency.

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

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

"Front panel" means that portion of the label of a pesticide product that is ordinarily visible to the purchaser under the usual conditions of display for sale.

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

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

Products not considered fungicides include:

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

"Hazard" means a situation where there exists a possibility that a given pesticide will

cause injury or have unreasonable adverse effects on the environment.

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

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed including any algae or other aquatic weed, or any plant parts growing where not wanted.

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

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

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

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

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

"Licensed pesticide dealer representative" means a person authorized to sell restricted use

pesticides in a licensed sales outlet and who has successfully passed an examination required by the head and obtained a license pursuant to section 4-66-52.

"Mode of action" means the manner that a pesticide impacts key biochemical processes responsible for its effect.

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

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

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

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

"Private pesticide applicator" or private applicator means a certified pesticide applicator who uses or supervises the use of any pesticide

which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the property of another person.

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

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

"Under the direct supervision of a certified applicator" means, unless otherwise prescribed by a pesticide's labeling, that a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied.

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

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

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

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

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

[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-3 Administration, enforcement, and penalty. The head may take any action as may be necessary in the administration and enforcement of the Act, this rule, and the penalty provisions as provided by law.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-4 Contents of the pesticide label; generally. Every pesticide product shall bear a label containing the information specified by the Act and these rules. The contents of a label shall show clearly and prominently the following:

- (1) The name, brand, or trademark under which the product is sold or prescribed in section 4-66-5;
- (2) The name and address of the producer, registrant, or person for whom produced as prescribed in section 4-66-6;
- (3) The net contents as prescribed in section 4-66-7;
- (4) The product registration number as prescribed in section 4-66-8;
- (5) The producing establishment number as prescribed in section 4-66-9;
- (6) An ingredient statement as prescribed in section 4-66-10 to section 4-66-16;
- (7) Warning or precautionary statements as prescribed in section 4-66-17 to section 4-66-19;
- (8) The directions for use as prescribed in section 4-66-20 to section 4-66-23; and
- (9) The use classification as prescribed in section 4-66-24.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
 (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)
 (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

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

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

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

- (1) Is false or misleading; or
- (2) Has not been approved by the head through registration or licensing.

[Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-14, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-6 Label; name and address of producer, registrant, or person for whom produced.

An unqualified name and address given on the label shall be considered as the name and address of the producer. If the registrant's name appears on the label and the registrant is not the producer, or if the name of the person for whom the pesticide was produced appears on the label, it shall be qualified by appropriate wording such as "packed for," "distributed by," or "sold by" to show that the name is not that of the producer. [Eff.

7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

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

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

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

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

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

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

(f) Variation above minimum content or around an average is permissible only to the extent that it represents deviation unavoidable in good manufacturing practice. Variation below a stated minimum is not permitted. In no case shall the average content of the packages in a shipment fall below the stated average content.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)
(Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-8 Label; product registration number. The registration number assigned to the pesticide product at the time of registration by the Environmental Protection Agency shall appear on the label, preceded by the phrase "EPA Registration No.," or the phrase "EPA Reg. No." The registration number shall be set in type of a size and style similar to other print on that part of the label on which it appears and shall run parallel to it. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-9 Label; producing establishment registration number. The producing establishment registration number preceded by the phrase "EPA Est.", of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. It shall appear on the wrapper or outside container of the package if the EPA establishment

registration number on the immediate container cannot be clearly read through the wrapper or container. [Eff. 7/13/81; comp **DEC 16 2006**]
 (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)
 (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-10 Label; ingredient statement; generally. (a) The label of each pesticide product shall bear a statement which contains the name and percentage by weight of each active ingredient, the total percentage by weight of all inert ingredients; and if the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic calculated as elemental arsenic.

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

(c) Unless the ingredient statement is a complete analysis of the pesticide, the term "analysis" shall not be used as a heading for the ingredient statement. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-11 Label; position of ingredient statement. (a) The ingredient statement is normally required on the front panel of the label. If there is an outside container or wrapper through which the ingredient statement cannot be clearly read, the ingredient statement shall also appear on the outside container or wrapper. If the size or form of the package makes it impracticable to place the ingredient statement on the front panel of the label, permission may be granted for the ingredient statement to appear elsewhere.

(b) The text of the ingredient statement shall run parallel with the other text on the panel on which it appears, and shall be clearly distinguishable from, and shall not be placed in, the body of other text. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-12 Label; names to be used in ingredient statement. The name used for each ingredient shall be the accepted common name, if there is one, followed by the chemical name. The common name may be used alone only if it is well known. If no common name has been established, the chemical name alone shall be used. In no case shall the use of a trademark or proprietary name be permitted unless such name has been accepted as a common name. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-13 Label; statements of percentages. The percentages of ingredients shall be stated in terms of weight-to-weight. The sum of percentages of the active and inert ingredients shall be one hundred. Percentages shall not be expressed by a range of values such as "22-25%." If the uses of the pesticide product are expressed as weight of active ingredient per unit area, a statement of the weight of active ingredient per unit volume of the pesticide formulation shall also appear in the ingredient statement. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-14 Label; accuracy of stated percentages. The percentages given shall be as precise as possible reflecting good manufacturing practice. If there may be unavoidable variation between manufacturing batches, the value stated for each active ingredient shall be the lowest

percentage which may be present. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

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

- (1) In cases where it is determined that a pesticide formulation changes chemical composition significantly, the product shall bear the following statement in a prominent position on the label: "not for sale or use after (date)"; and
- (2) The product shall meet all label claims up to the expiration time indicated on the label.

[Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-16 Label; inert ingredients. The head may require the name of any inert ingredient or ingredients to be listed in the ingredient statement if it is determined that such ingredient or ingredients may pose a hazard to humans or the environment. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-17 Label; warning and precautionary statements; generally. Required warnings and precautionary statements concerning the general areas of toxicological hazard including hazard to children, environmental hazard, and physical or chemical hazard fall into two groups: those required on the front panel of the labeling and those which may appear elsewhere. Specific requirements concerning content, placement, type size, and prominence are given in section 4-66-18 and section 4-66-19. [Eff. 7/13/81; am and

comp **DEC 16 2006**] (Auth: HRS §§149A-15,
149A-33, 40 CFR §156.60) (Imp: HRS §§149A-15,
149A-33, 40 CFR §156.60)

§4-66-18 Label; required front panel statements. (a) With the exception of the child hazard warning statement, the text required on the front panel of the label is determined by the toxicity category of the pesticide. The category is assigned on the basis of the highest hazard shown by any of the following indicators:

Toxicity category I

- Oral LD₅₀Up to and including 50 mg/kg
- Inhalation LC₅₀Up to and including 0.2 mg/liter
- Dermal LD₅₀Up to and including 200 mg/kg
- Eye effects Corrosive; corneal opacity not reversible within 7 days
- Skin effects Corrosive

Toxicity category II

- Oral LD₅₀ From 50 through 500 mg/kg
- Inhalation LC₅₀ From 0.2 through 2 mg/liter
- Dermal LD₅₀ From 200 through 2,000 mg/kg
- Eye effects Corneal opacity reversible within 7 days
- Skin effects Severe irritation at 72 hours

Toxicity category III

- Oral LD₅₀ From 500 through 5,000 mg/kg
- Inhalation LC₅₀ From 2 through 20 mg/liter
- Dermal LD₅₀ From 2,000 through 20,000 mg/kg
- Eye effects No corneal opacity; irritation reversible within 7 days
- Skin effects Moderate irritation at 72 hours

Toxicity category IV

- Oral LD₅₀ Greater than 5,000 mg/kg
- Inhalation LC₅₀ Greater than 20 mg/liter
- Dermal LD₅₀ Greater than 20,000 mg/kg
- Eye effects No irritation
- Skin effects Mild or slight irritation at 72 hours

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

- (1) Toxicity category I. All pesticide products meeting the criteria of toxicity category I shall bear on the front panel, the signal word "danger." In addition, if the product was assigned to toxicity category I on the basis of its oral, inhalation, or dermal toxicity (as distinct from skin and eye local effects) the word "poison" shall appear in red on a background of distinctly contrasting color and the skull and crossbones shall appear in immediate proximity to the word "poison";
- (2) Toxicity category II. All pesticide products meeting the criteria of toxicity category II shall bear on the front panel the signal word "warning";
- (3) Toxicity category III. All pesticide products meeting the criteria of toxicity category III shall bear on the front panel the signal word "caution";
- (4) Toxicity category IV. All pesticide products meeting the criteria of toxicity category IV shall bear on the front panel the signal word "caution"; and
- (5) Use of any signal word or words associated with a higher toxicity category is not permitted except when the head determines that such labeling is necessary to prevent unreasonable adverse effects to humans or the environment. In no case shall more than one human hazard signal word appear on the front panel of a label.

(c) Every pesticide product label shall bear on the front panel the statement "keep out of reach of children." Only in cases where the likelihood of contact with children during distribution, marketing, storage, or use is demonstrated by the applicant to be extremely remote, or if the nature of the pesticide is such

that it is approved for use on infants or small children, may the head waive this requirement.

(d) Statement of practical treatment required for the respective toxicity categories shall be as follows:

- (1) A statement of practical treatment (first aid or other) shall appear on the front panel of the label of all pesticides falling into toxicity category I on the basis of oral, inhalation or dermal toxicity. The head may, however, permit reasonable variations in the placement of the statement of practical treatment if some reference such as "see statement of practical treatment on back panel" appears on the front panel near the word "poison" and the skull and crossbones; and
- (2) For other toxicity categories, the statement of practical treatment is not required on the front panel except as described in (1) above. The applicant may, however, include such a front panel statement at his option. Statements of practical treatment are, however, required elsewhere on the label in accord with section 4-66-18 if they do not appear on the front panel.

(e) All the required front panel warning statements shall be grouped together on the label, and shall appear with sufficient prominence relative to other front panel text and graphic material to make them unlikely to be overlooked under customary conditions of purchase and use. The minimum type size requirement shall be that established under FIFRA. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §§156.60-156.68) (Imp: HRS §§149A-15, 149A-33, 40 CFR §§156.60-156.68)

§4-66-19 Label; other required warnings and precautionary statements. (a) The warnings and precautionary statements as required below shall appear together on the label under the general

heading "precautionary statements" and under appropriate subheadings of "hazard to humans and domestic animals", "environmental hazard", and "physical or chemical hazard".

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

(c) Where a hazard exists to non-target organisms excluding humans and domestic animals, precautionary statements are required stating the nature of the hazard and the appropriate precautions to avoid potential accident, injury, or damage. Examples of the hazard statements and the circumstances under which they are required follow:

- (1) If a pesticide intended for outdoor use contains an active ingredient with a mammalian acute oral LD₅₀ of 100 mg/kg or less, the statement "this pesticide is toxic to wildlife" is required;
- (2) If a pesticide intended for outdoor use contains an active ingredient with a fish acute LC₅₀ of 1 ppm or less, the statement "this pesticide is toxic to fish" is required;
- (3) If a pesticide intended for outdoor use contains an active ingredient with an avian acute oral LD₅₀ of 100 mg/kg or less, or a subacute dietary LC₅₀ of 500 ppm or less, the statement "this pesticide is toxic to wildlife" is required;
- (4) If either accident history or field studies demonstrate that use of the pesticide may result in fatality to birds, fish, or mammals, the statement "this pesticide is extremely toxic to wildlife (fish)" is required;
- (5) For uses involving foliar application to agricultural crops, forests, shade trees, or mosquito abatement treatments, pesticides toxic to

pollinating insects shall bear appropriate label cautions; and

- (6) For all outdoor uses other than aquatic applications the label shall bear the caution "keep out of lakes, ponds, or streams. Do not contaminate water by cleaning of equipment or disposal of wastes".

(d) Warning statements on the flammability or explosive characteristics of the pesticide are required as shall be established under FIFRA.

[Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §§156.70, 156.78, 156.80 and 156.85) (Imp: HRS §§149A-15, 149A-33, 40 CFR §§ 156.70, 156.78, 156.80 and 156.85)

§4-66-20 Label; directions for use; generally. Directions for use shall be stated in terms which can be easily read and understood by the average person likely to use, or to supervise the use of, the pesticide. When followed, directions shall be adequate to protect the public from fraud and from personal injury and to prevent unreasonable adverse effects to humans or the environment. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-21 Label; placement of directions for use. (a) Directions may appear on any portion of the label provided that they are conspicuous enough to be easily read by the user of the pesticide product.

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

- (1) If required by the head, the printed or graphic matter is securely attached to each package of the pesticide, or placed within the outside wrapper or bag;

- (2) The label bears a reference to the directions for use in accompanying leaflets or circulars, such as "see directions in the enclosed circular"; and
- (3) The head determines that it is not necessary for the directions to appear on the label.

[Eff. 7/13/81; am and comp]
 (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)
 (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

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

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

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

- (1) The label clearly states that the product is for use only by physicians or veterinarians;
- (2) The head determines that the directions are not necessary to prevent

unreasonable adverse effects on humans or the environment; and

- (3) The product is also a drug and regulated under the provisions of the Federal Food, Drug, and Cosmetic Act.

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

- (1) There is information readily available to the formulators on the composition, toxicity, methods of use, applicable restrictions or limitations, and effectiveness of the product for pesticide purposes;
- (2) The label clearly states that the product is intended for use only in manufacturing, formulating, mixing, or repacking for use as a pesticide and specifies the type or types of pesticide products involved;
- (3) The product as finally manufactured, formulated, mixed, or repackaged is registered; and
- (4) The head determines that the directions are not necessary to prevent unreasonable adverse effects on humans or the environment.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)
(Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

S4-66-23 Label; contents of directions for use. The directions for use shall include the following, under the headings "directions for use";

- (1) Immediately below the directions for use, the statement "it is a violation of Federal law to use this product in a manner inconsistent with its labeling";
- (2) The site or sites of application, for example, crops, animals, areas, or objects to be treated;
- (3) The target pest or pests associated with each site;

- (4) The dosage rate associated with each site and pest;
- (5) The method of application, including instructions for dilution, if required, and type or types of application apparatus or equipment required;
- (6) The frequency and timing of applications necessary to obtain effective results without causing unreasonable adverse effects on humans or the environment;
- (7) Specific limitations on reentry to areas where the pesticide has been applied, meeting the requirements concerning reentry provided by section 4-66-65;
- (8) Specific directions concerning the storage and disposal of the pesticide and its container, meeting the requirements of sections 4-66-54 and 4-66-55. These instructions shall be grouped and appear under the heading "storage and disposal." This heading shall be set in type of the same minimum sizes as required for the child hazard warning required under FIFRA;
- (9) Limitations or restrictions on use required to prevent unreasonable adverse effects on humans or the environment, such as:
 - (A) Required intervals between application and harvest of food or feed crops;
 - (B) Rotational crop restrictions;
 - (C) Warnings as required against use on certain crops, animals, objects, or in or adjacent to certain areas;
 - (D) For restricted use pesticides, the category of applicators to whom use is restricted unless the head has determined that the product may be used by any certified applicator;
 - (E) For restricted use pesticides, a statement that the pesticide may be applied under the direct

supervision of a certified applicator who is not physically present at the site of application but nonetheless available to the person applying the pesticide; and

- (F) Other pertinent information which the head determines to be necessary for the protection of humans and the environment.

[Eff. 7/13/81; am and comp DEC 16 2006]
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)
(Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-24 Label; statement of use classification; generally. Any pesticide product for which some uses are classified for [general] nonrestricted use and others for restricted use shall be separately labeled according to the labeling standards set forth in this section and shall be marketed as separate products with different registration numbers, one bearing directions only for nonrestricted use or uses and the other bearing directions for restricted use or uses, except that if a product has both restricted use or uses and nonrestricted use or uses, both of these uses may appear on a product labeled for restricted use. [Eff. 7/13/81; am and comp DEC 16 2006] (Auth: HRS §§149A-15, 149A-33, 40 CFR §[156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-25 REPEALED. [Eff. 7/13/81;
R]

§4-66-26 Label; restricted use classification. Pesticide products bearing directions for use or uses classified restricted shall bear statements of restricted use classification on the front panel as follows:

- (1) At the top of the front panel of the label, set in type of the same minimum sizes as required for human hazard signal words and appearing with sufficient prominence relative to other text and graphic material on the front panel to make unlikely to be overlooked

- under customary conditions of purchase and use, the statement "restricted use pesticide" shall appear; and
- (2) Directly below this statement on the front panel, a summary statement of the terms of restriction imposed as a precondition to registration shall appear. If use is restricted to certified applicators, the following statement is required: "for retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification." If, however, other regulatory restrictions are imposed, the head shall define the appropriate wording for the terms of restriction by rules.

[Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

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

- (a) All words, statements, graphic representations, designs, or other information required on the labeling by the Act or the rules in this part shall be:
- (1) Clearly legible to a person with normal vision; and
 - (2) Placed with such conspicuousness (as compared with other words, statements, designs, or graphic matter on the labeling) and expressed in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (b) All required label texts shall:
- (1) Be set in six-point or larger type;
 - (2) Appear on a clear contrasting background; and
 - (3) Not be obscured or crowded.

[Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-28 Label; language to be used. All required label or labeling text shall appear in the English language. However, the head may require or the applicant may propose additional text in other languages considered necessary to protect the public. When additional text in another language is necessary, all labeling requirements shall be applied equally to both the English and other language versions of the labeling. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

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

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

(c) When pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy

of the label or labeling, including all appropriate directions for use shall be securely attached to the container in the immediate vicinity of the discharge control valve. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

§4-66-30 Label; false or misleading statements. Pursuant to section 149A-2(22), Hawaii Revised Statutes, a pesticide or a device is misbranded if its labeling is false or misleading in any particular including both pesticidal or non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:

- (1) A false or misleading statement concerning the composition of the product;
- (2) A false or misleading statement concerning the effectiveness of the product as a pesticide or device;
- (3) A false or misleading statement about the value of the product for purposes other than as a pesticide or device;
- (4) A false or misleading comparison with other pesticides or devices;
- (5) Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by the Hawaii department of agriculture;
- (6) The name of a pesticide which contains two or more principal active ingredients if the name suggests one or more but not all such principal active ingredients even though the name of the other ingredients are stated elsewhere in the labeling;
- (7) A true statement used in such a way as to give a false or misleading impression to the purchaser;
- (8) Label disclaimers which negate or detract from labeling statements required under the Act and these rules;
- (9) Claims as to the safety of the pesticide or its ingredients, including

- statements such as "safe", "nonpoisonous", "noninjurious", "harmless", or "nontoxic to humans and pets" with or without a qualifying phrase as "when used as directed"; and
- (10) Non-numerical and comparative statements on the safety of the product, including but not limited to:
- (A) "Contains all natural ingredients";
 - (B) "Among the least toxic chemicals known"; and
 - (C) "Pollution approved".

[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)
(Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

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

(b) Clearly legible reproductions or photo reductions shall be accepted for unusual labels such as those silk-screened directly onto glass or metal containers or large bag or drum labels.
[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §§149A-15, 149A-33, 40 CFR §156.10)
(Imp: HRS §§149A-15, 149A-33, 40 CFR §156.10)

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

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

- (1) Pesticides in toxicity categories I and II as defined in section 4-66-18;
- (2) Pesticides or pesticide uses which are determined to be a health hazard for one or more reasons including but not

limited to toxicity, body storage, oncogenicity, mutagenicity, and teratogenicity or other reproductive effects;

- (3) Pesticides or pesticide uses which can reasonably be anticipated to result in contamination of groundwater or significant reductions in nontarget organisms, or fatality to members of endangered species; and
- (4) Pesticides or pesticide uses authorized under section 18, of FIFRA.

(c) The head may classify a pesticide or pesticide use meeting or exceeding the criteria set forth in section 4-66-32(b) for nonrestricted use if it is determined that measures such as packaging, type of formulation, or method of application eliminate or reduce hazards associated with the pesticide or its use.

(d) The head, in consultation with the advisory committee, shall determine those pesticides or pesticide uses meeting or exceeding the criteria set forth in section 4-66-32(b) and submit a list of those pesticides and pesticide uses for adoption by the board.

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

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

Simazine

All

[Eff. 7/13/81; am and comp DEC 16 2006]
(Auth: HRS §§149A-19, 149A-33, 7 USC 136 v, (a)-
(b), 7 USC 136 w-1, (a)-(b)) (Imp: HRS
§§149A-19, 149A-33)

§4-66-32.1 Evaluation of pesticides uses.

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

(b) The head shall evaluate a licensed pesticide when unreasonable adverse effects to humans or the environment have been documented and associated with the use of that pesticide. Unreasonable adverse effects to humans or the environment shall include, but not be limited to the following circumstances:

- (1) Public or worker health hazard;
- (2) Pesticide residues in drinking water are present in levels which are equal to or exceed twenty (20) percent of the established Federal or state health standards or advisories;
- (3) Pesticide residues in food or feed are present in levels exceeding the established tolerances;
Fish or wildlife hazard, including hazards to endangered species;
- (4) Toxicity to nontarget organisms;
- (5) Hazardous packaging;
- (6) Misbranded as established in sections 4-66-4 to 4-66-30;
- (7) Other information suggesting unreasonable adverse effects on humans or the environment associated with the use of a specific pesticide; and

- (8) Discovery that data upon which a license was issued are false, misleading, or incomplete.

(c) The evaluation of the licensed pesticide shall consist of identification of unreasonable adverse effects to humans or the environment, including the social, economic, and environmental costs of the pesticide, identification of the uses of the licensed pesticide, identification of the benefits of the pesticide, identification of alternatives to the licensed pesticide, identification of regulatory controls considered by the head in mitigating unreasonable adverse effects on humans or the environment, determination by the head as to whether the effects on humans or the environment are unreasonable, and recommendation by the head for regulatory actions. Evaluation may lead to no change, restriction of a use, refusal to renew a license, or cancellation or suspension of the license. The evaluation shall be made available to all interested parties to provide them with an opportunity to submit additional information, and comment on the evaluation.

[Eff and comp **DEC 16 2006**] (Auth: HRS
 §§149A-14, 149A-33) (Imp: HRS §149A-33)

§4-66-33 Pesticide licensing; exceptions.

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

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

- (1) Pesticides transferred between EPA registered establishments operated by the same producer for packaging or for use in producing another pesticide, provided the pesticides are labeled to clearly show their identity and the purpose for which they are being transferred;
- (2) Pesticides distributed under an experimental use permit issued by the head;

- (3) Pesticides transferred for purpose of disposal when marked to show they are for disposal only, and accompanied by sufficient information to identify products and to insure that product can be handled with minimum hazard to man or the environment;
- (4) Pesticides intended solely for export when prepared or packed according to specifications of foreign purchaser;
- (5) Pesticides being distributed under an emergency exemption; and
- (6) Pesticides distributed to research laboratories for the purpose of laboratory or greenhouse tests or limited replicated field trials of less than one-fourth acre to determine toxicity or other properties and from which the producer, researcher, or applicator or any other person conducting the test does not expect to receive any benefit in pest control from its use.

[Eff. 7/13/81; comp **DEC 16 2006**] (Auth: 40
CFR §152.30, HRS §§149A-13, 149A-19, 149A-33)
(Imp: HRS §§149A-13, 149A-19, 149A-33)

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

- (1) Applications shall be filed by the applicant or by an agent whom the applicant has designated by a notarized letter;
- (2) Applications shall be made on forms provided by the department and shall contain the following information: name and address of the person whose name shall appear on the label, name and address of the applicant, name of the pesticide or device as shown on the label, the EPA registration number (for

- pesticides), the EPA establishment number, and the signature of the applicant;
- (3) Applications shall be submitted at least thirty days before the time when it is desired that licensing take effect;
 - (4) Applications shall be accompanied by a number of copies of each label and any other printed or graphic matter which is required to accompany the pesticide or device when offered for sale or distribution, including all claims and directions for use, as specified by the head; and
 - (5) If requested by the head, the applicant for a pesticide license shall provide the complete formula of the pesticide including active and inert ingredients and a description of tests and the results thereof on which claims are based, including efficacy, residue, safety, and other supporting data that shows the pesticide shall perform its intended function without unreasonable adverse effects on humans or the environment.
 - (6) If requested by the head, the applicant for device approval shall provide a description of the principles fundamental to the efficacy of the device and a description of the tests conducted according to the procedures described below and the results thereof on which claims are based, including efficacy, reliability, safety and other supporting data that show the device will perform its intended function without causing unreasonable adverse effects on humans or the environment.
 - (7) Each test submitted pursuant to this section shall be based on a written protocol that clearly indicates the objectives and all the methods for the conduct of the test. The protocol shall contain, but not be limited to, the following information:

- (A) A descriptive title and statement of the purpose of the study;
 - (B) The name and address of the sponsor and address of the testing facility at which the study was conducted;
 - (C) Justification for the selection of the test organism;
 - (D) Where applicable, the number, body weight range, sex, source of supply, species, strain, substrain and age of the organisms tested;
 - (E) A description of the experimental design, including methods for the control of bias;
 - (F) Where applicable, a description or identification of the diet for the test animals or fertilization and irrigation schedules for plants used in the test;
 - (G) Treatments, such as the test frequency and volume for devices, and the method and frequency of administration;
 - (H) The type and frequency of data collection, and measurements to be made;
 - (I) The records to be maintained;
 - (J) The date of approval by the sponsor and the signature of the test director; and
 - (K) A statement of the proposed statistical analyses to be used.
- (8) The department may test devices to determine the reliability, efficacy and safety of the device. The applicant shall provide devices to the department upon its request in order to conduct testing.
- (9) The department shall provide the applicant with a written estimate of the costs necessary to conduct testing, a description of the tests to be conducted, and estimated schedule to complete the tests.
- (10) If the applicant agrees to have the device tested by the department or its

authorized representative, half of the estimated costs of the tests shall be paid to the department before the tests are started. The balance shall be paid to the department upon completion of the tests.

- (11) The applicant may initiate tests required pursuant to (8) above, using qualified testing facilities, with the concurrence of the department.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
 (Auth: HRS §§149A-13, 149A-15, 149A-19, 149A-33, 460J-24.5) (Imp: HRS §§149A-13, 149A-15, 149A-19, 149A-33, 460J-24.5)

§4-66-35 Pesticide licensing; effective date. (a) Licenses shall become effective on the date issued and unless canceled by the head shall continue in effect through the date of expiration.

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

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

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

- (1) The pesticide product is in the manufacturer's or registrant's original unbroken container;
- (2) The claims made (its directions for use, its use classification and other information contained in its labeling) do not differ from those made in conjunction with the license currently in effect; and
- (3) Any change in the labeling or formula of a licensed pesticide shall be submitted in advance to the head provided:
 - (A) The licensee shall describe the exact change and upon request, shall submit test results to

support any change in labeling claims; and

- (B) After the effective date of any change in labeling or formulas, the pesticide shall be marketed only under the new label or formula, provided, the head may permit a reasonable time for disposition of stocks, if in the opinion of the head, such disposition does not result in any unreasonable adverse effects on humans or the environment.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-19, 149A-33)

§4-66-36 Pesticide licenses; corrections.

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

(b) If the licensee fails to make the necessary corrections within fifteen days upon receipt of the notice, the head may:

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

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

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

(e) Applicants may request a hearing as provided in §149A-14, Hawaii Revised Statutes.

[Eff. 7/13/81 am and comp **DEC 16 2006**]

(Auth: HRS §§149A-13, 149A-14, 149A-19, 149A-33)

(Imp: HRS §§149A-13, 149A-14, 149A-19, 149A-33)

§4-66-37 Special local need (SLN)

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

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

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

(c) The head shall determine that the product warrants the claims made for it in the registration application. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v(c), 40 CFR

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

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

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

(b) Determination required by section 4-66-38(a) shall be based on data and criteria consistent with federal regulations applicable to the type of product or use under consideration. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v(c), 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v(c), 40 CFR §162.153)

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

- (1) A copy of the final printed labeling shall be reviewed by the head as soon

- as practicable after a registration is issued in order to verify compliance;
- (2) A new product registered shall be accompanied, at the time of use, by labeling meeting all applicable criteria of sections 4-66-4 to 4-66-31. New product labeling shall also contain a statement identifying "for distribution and use only within the state of Hawaii" and the assigned special local need number.
 - (3) For a registration of an additional use of a federally registered product, labeling from the federally registered product shall be accompanied at the time of use by supplemental labeling which contains:
 - (A) A statement identifying "For distribution and use only within the State of Hawaii";
 - (B) Directions for use to meet the special local need which satisfy the criteria of sections 4-66-10 to 4-66-31;
 - (C) The trade name of the product;
 - (D) The name and address of the special local need registrant;
 - (E) The EPA registration number of the federally registered product;
 - (F) The assigned special local need number;
 - (G) A statement requiring a person using the product to comply with all applicable directions, restrictions, and precautions found in the labeling of the federally registered product; and
 - (H) A statement prohibiting the use of the product in a manner inconsistent with federal and accompanying supplemental labeling.
 - (4) If the head classifies for restricted use a product or use registered by the head, which is not required to be classified by section 4-66-32, then the head shall require supplemental

labeling for the product or use to have additional appropriate precautions, and a statement that the product or use is for restricted use.

(b) All products registered by the head shall meet all appropriate federal packaging standards as well as all appropriate standards for coloration established and contained in section 4-66-42. Prior to issuing any registration, the head shall determine that the product conforms to these requirements. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v(c), 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v(c), 40 CFR §162.153)

§4-66-40 Special local need; classification. (a) As part of the registration of any part or use, the head shall classify the product or use consistent with section 4-66-32.

(b) A product or use thereof registered by the head shall be classified by the head for restricted use if the product is identical or similar in composition to a federally registered product for which the use has been classified as restricted under federal law or for which a use similar to the registered use has been classified as registered use under federal law, and the registered product or use meets the criteria for classification as restricted use pesticides under section 4-66-32. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v(c), 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136v(c), 40 CFR §162.153)

§4-66-41 Special local need; notification and submission of data to the Environmental Protection Agency (EPA). (a) Within ten working days from the date of issuance of amendments or revocation of a registration, the head shall notify EPA in writing, of the action. Notification of registrations, or amendments thereto, shall include the confidential statements of the formula of any new product, and

a copy of the draft labeling reviewed and approved by the head, provided that labeling previously approved by the EPA as part of a federal registration need not be submitted.

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

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

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

§4-66-42 REPEALED. [Eff. 7/13/81;

R]
DEC 16 2006

§4-66-42.1 Coloration of pesticides. (a) The following requirements for the coloration of certain pesticides have been determined necessary for the protection of public health and the environment.

(b) Seed Treatment products.

- (1) Pesticide products intended for use in treating seeds must contain an EPA-approved dye to impart an unnatural color to the seed, unless appropriate tolerances or other clearances have

been established under the Federal Food, Drug and Cosmetic Act for residues of the pesticide.

- (2) The following products are exempt from the requirement of paragraph (b) of this section:
 - (A) Products intended and labeled for use solely for commercial seed treatment, provided that the label bears a statement requiring the user to add an EPA-approved dye with the pesticide during the seed treatment process.
 - (B) Products intended and labeled for use solely as at-planting or hopper box treatments.
 - (C) Products, which are gaseous in form or are used as fumigants.
- (3) EPA-approved dyes for seed treatment are those listed in Title 40 of the Code of Federal Regulations, Part 180.1001 (c) or (d), or 180.2010 or 180.2020.

[Eff and comp **DEC 16 2006**] (Auth: HRS §§149A-16, 149A-33, 40 CFR §§153.140, 153.155)
(Imp: HRS §§149A-16, 149A-33, 40 CFR §§153.140, 153.155)

§4-66-43 Enforcement. (a) The head may enter any place or conveyance where pesticides or devices are manufactured, stored, packed, delivered for transportation, transported, offered for sale or sold, and may inspect and take samples of the pesticides and devices. An unbroken package shall be taken as the official sample where the pesticide is packed in small bottles, or small packages. Where the pesticide is packed in large containers, the official samples shall be a portion taken from one original unopened package in a lot.

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

(c) A notice of apparent violation shall include:

- (1) If from an examination or analysis, a pesticide or device appears to be in violation of the Act or this rule, a notice in writing shall be sent to the person against whom proceedings are contemplated, giving that person the opportunity to offer a written explanation. The notice shall state the manner in which the sample failed to meet the requirements of the Act or this rule; and
- (2) Any person may, in addition to this written reply to the notice, file with the head within twenty days of receipt of the notice a written request for a hearing in connection therewith.

(d) The head may issue "stop sale" and "removal from sale" orders to any pesticide or device which violates or fails to comply with the provisions of the Act or this rules, and may place written or printed "stop sale" and "removal from sale" notices on any pesticide or device.

- (1) Upon receipt of the orders, the vendors shall correct the violation and effect full compliance therewith. The articles shall not hereafter be sold, offered for sale, transferred or disposed of except upon authorization by the head; and
- (2) No person shall remove, deface or tamper with any "stop sale" and "removal from sale" notice.

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

[Eff. 7/13/81; am and comp **DEC 16 2006**]
 (Auth: HRS §§149A-11, 149A-20, 149A-21, 149A-33)
 (Imp: HRS §§149A-11, 149A-20, 149A-21, 149A-33)

S4-66-44 Notice of judgment. Publication of judgments of the courts in cases arising under

the criminal or seizure provisions of the Act or this rule may be made in the form of notices, circulars, or bulletins as the head may direct. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-21, 149A-33) (Imp: HRS §§149A-21, 149A-33)

§4-66-45 Experimental use permits; generally. Experimental use permits may be issued for the intrastate shipment, delivery or use of a pesticide product which is to be tested further to determine the scope and limitations of its usefulness and the effect of its use on humans and the environment. Permits may be issued for products for use in experimental programs under the supervision of applicators certified in demonstration and research pest control and broad scale testing under normal conditions of use. The head may require the information and data concerning the product and the proposed testing program which is deemed necessary to make determinations on the merits of the proposals. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §§172.20 - 172.26) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §§172.20 - 172.26)

§4-66-46 Experimental use permits; prohibitions. No permits shall be issued for any of the following:

- (1) A product containing an active or inert ingredient which is currently subject to an EPA cancellation or suspension of registration order, or which is currently subject to an EPA notice of intent to suspend or cancel registration because of human health, environmental, or efficacy consideration; except that a permit may be issued for a product for purpose or in a formulation which:
 - (A) Is not specifically considered in, or which is not subject to, suspension or cancellation

- proceedings, after consultation with appropriate EPA officials; or
- (B) Was specifically considered during the proceedings but not suspended, canceled, or subject to a notice of intent to suspend or cancel.
- (2) A use of a product which has been the subject of a notice of denial of registration under FIFRA; and
- (3) A use of a product, which may involve use in or on food or feed other than as authorized in section 4-66-47.
- [Eff. 7/13/81; am and comp **DEC 16 2006**]
 (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.24) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.24)

§4-66-47 Experimental use permits; exceptions. No experimental use permit is required for the intrastate shipment or use of a substance or mixture of substances being put through laboratory, greenhouse, or limited field trials of less than one-fourth acre, in which the purpose is to determine its value as a pesticide or to determine its toxicity, or other properties, where the tests are being conducted by recognized research personnel and from which the user does not expect to receive any benefit in pest control from its use. These substances or mixture of substances are not considered to be pesticides within the meaning of the Act or this rule. No experimental permit is required if an experimental use permit has been issued by the EPA for the proposed trial(s). [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 7 USC §136(v)(a)) (Imp: HRS §§149A-19, 149A-22, 149A-33)

§4-66-48 Experimental use permits provisions for issuance. (a) A permit is required for a pesticide intended for experimental use which is not exempt under section 4-66-47. If a pesticide is to be tested for a use, which is likely to result in a residue

on or in food or feed, a permit for experimental use may be issued provided:

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

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

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

- (1) Name and address of the shipper and the consignee and place or places from which the shipment shall be made;
- (2) Proposed date of shipment or proposed shipping period not to exceed one year and quantity to be shipped;
- (3) A statement of the composition of material to be covered by the permit which should apply to a single material or similar formulations of the material;
- (4) The name, address and telephone number and qualification of the person responsible for conducting the test;

- (5) Available data or reference to available data on the analytical method and toxicity of the pesticide;
- (6) The purpose or objective of the proposed tests; a description of the proposed testing program including test parameters; a designation of the pest organism or organisms involved; the amount of pesticide product proposed for use; the crops, fauna, flora, sites, modes, dosage rate and situation of applications on or in which the pesticide is to be used; the number of acres, number structure sites, or number of animals to be treated or included in the area of experimental use; the proposed dates or period or periods during which the testing program is to be conducted and the manner in which supervision of the program shall be accomplished and the method of destruction or disposal of treated food or feed;
- (7) A statement that the pesticide is intended for experimental use only;
- (8) Proposed labeling which shall bear:
 - (A) The prominent statement "for experimental use only" on the container label and any accompanying circular or other labeling;
 - (B) A warning or caution statement which may be necessary and if complied with is adequate for the protection of those who may handle or be exposed to the experimental formulations;
 - (C) The name and address of the applicant for the permit;
 - (D) The name or designation of the formulation; and
 - (E) If the pesticide is to be sold, a statement of the names and percentages of the principal active ingredients in the product; provided, that, if the shipper shall submit a copy of a valid

experimental permit issued under the provisions of FIFRA the accepted labeling related thereto, the head may exempt the shipper from the requirement of submitting a part of the application, the data and information herein specified in this subsection; and

- (9) A statement as to the disposal of any unused portions of the experimental pesticide.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.24) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.24)

§4-66-49 Experimental use permit; restrictions. (a) The head may limit the quantity of a pesticide covered by a permit to a lesser quantity than requested if available information on effectiveness, toxicity, or other hazards is not sufficient to justify the scope of experimental use proposed in the application, or make other limitations in the permit as may be determined to be necessary for the protection of the public.

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

(c) Unless revoked by the head, permits shall be effective for a specified period of time, usually one year, depending upon the crop or site to be treated and the testing program submitted. Permits may be renewed upon request if circumstance warrants. [Eff. 7/13/81; comp **DEC 16 2006**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25)

§4-66-50 Experimental use permits; reports. The holder of a permit shall submit periodic reports to the head regarding the status of the experimental program. Reports shall be submitted at specific intervals as may be prescribed by the head (but shall report immediately incidents of

unreasonable adverse effects on the environment from use, or from exposure to pesticides covered by an experimental use permit). These reports shall include the following information:

- (1) Quantity of the pesticide shipped and used during the reporting period;
- (2) Name and address of consignee and ultimate destination and amount of each shipment;
- (3) A summary of data on effectiveness, phytotoxicity, or other pertinent information regarding usefulness obtained during the permit period;
- (4) Any additional data obtained on residue or analytical methods obtained;
- (5) Any additional data obtained on toxicity or unreasonable adverse effects to humans, non-target animals, or the environment;
- (6) Any residue data obtained on the treated crop or site on which determination can be made regarding reentry into the treated area;
- (7) Disposition of unused pesticide; and
- (8) Such other information and data as may be prescribed by the head.

[Eff. 7/13/81 am and comp]
 (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172.25)

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

(b) The head shall revoke an experimental use permit if it is determined that the terms or conditions are being violated, or that its terms or conditions are inadequate to avoid unreasonable adverse effects on humans or the environment. [Eff. 7/13/81 am and

comp **DEC 16 2006**] (Auth: HRS §§149A-19,
149A-22, 149A-33, 40 CFR §172.25) (Imp: HRS
§§149A-19, 149A-22, 149A-33, 40 CFR §172.25)

§4-66-52 Restricted use pesticide dealer and representative. (a) Persons who sell restricted use pesticides or pesticides requiring an annual use permit shall obtain a license for that purpose from the department which shall expire on December 31 of each year and shall be renewed on or before January 1 of each year.

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

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

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

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

(f) A license issued to a dealer representative shall be valid for 5 years. Renewal shall be by examination.

(g) Every licensed pesticide dealer shall be responsible for the acts of all licensed

pesticide dealer representatives and individuals employed in the solicitation, sale, distribution and handling of pesticides. Any violation of the Act or this rule, whether committed by the dealer, licensed dealer representative, or by any other officer, agent, or employee of the dealer may result in suspension or revocation of the dealer's license or the license of the dealer representative, or both, as well as penalties pursuant to section 149A-41, Hawaii Revised Statutes. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-11, 149A-17, 149A-18, 149A-19, 149A-33) (Imp: HRS §§ 149A-11, 149A-17, 149A-18, 149A-19, 149A-33)

§4-66-53 Dealers' records and reports. (a) Licensed dealers shall keep a record of each sale, distribution, delivery, theft, spill, or any other activity affecting the amount of restricted use pesticides and pesticides requiring an annual permit pursuant to section 4-66-63 at each sales outlet on forms or through other media approved by the head.

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

(c) A copy of the licensed sales outlet's record shall be submitted to the head within 15 days after the end of each calendar month for which the record is being kept. A copy shall be kept at the licensed sales outlet where the sales were made for a period of one year. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-17, 149A-19, 149A-33) (Imp: HRS §§149A-17, 149A-19, 149A-33)

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

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

(c) A prominent sign with legible bold print not less than one-half inch in height to read "pesticide products for garden and lawn or outdoor use only - it is unlawful and may be hazardous to use inside your home" shall be posted in the area where such lawn and garden pesticides are displayed and sold. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §§149A-31, 149A-33) (Imp: HRS §§149A-31, 149A-33)

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

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

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

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

(e) Triple-rinsed pesticide containers shall be disposed of in a solid waste management facility approved by the state Department of Health or EPA, as appropriate.

(f) Residue and rinse liquids should be added to spray mixtures and applied according to label directions.

[Eff. 7/13/81; am and comp]
 (Auth: HRS §§149A-19, 149A-33) **DEC 16 2006** HRS
 §§149A-19, 149A-33)

§4-66-56 Certification of applicators. (a) An applicator applying restricted use pesticides shall be certified either as a commercial pesticide applicator or a private pesticide applicator.

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

- (1) Category 1, agricultural pest control, includes the following:
 - (A) A plant pest control subcategory for persons using or supervising the use of restricted use pesticides in production of agricultural food and feed crops, including, but not limited to grains, seeds, soybeans, forage, vegetables, fruits, trees and nuts, as well as non-crop agricultural lands;
 - (B) An animal pest control subcategory for persons using or supervising the use of restricted use pesticides to control pests on animals including, but not limited

to, beef and dairy cattle, swine, sheep, horses, goats, and poultry, and to premises on or in which animals are confined; and doctors of veterinary medicine engaged in the business of application for hire, publicly holding themselves out as pesticide applicators or engaged in large scale use of pesticides;

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

- handling establishments, human dwellings, institutions such as schools and hospitals, industrial sites such as warehouses, grain elevators, and any other structures and adjacent area, public or private, and for the protection of stored, processed or manufactured products. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 1;
- (B) Termite pest control, for persons using or supervising the use of restricted use pesticides other than by fumigation to control subterranean and drywood termites in or around human dwellings, institutions such as schools and hospitals, hotels, industrial sites, and any other structures and adjacent area, public or private. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 3;
- (C) General pest control, for persons using or supervising the use of restricted use pesticides to control pests, in or around food establishments, human dwellings, institutions such as schools, hospitals, industrial sites such as warehouses, and any other structures and adjacent area, public or private; and for the protection of stored, processed or manufactured products, excluding those applicators certified in category 3 and subcategories 7A and 7B. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 2;

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

- having medical and public health importance;
- (9) Category 9, regulatory pest control, for state, federal, or other government employees using or supervising the use of restricted use pesticides in the control of regulated pests prescribed under chapter 150A, Hawaii Revised Statutes, and the Federal Plant Pest Act;
 - (10) Category 10, demonstration, research and instructional pest control, for persons who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides; and
 - (11) Category 11, chemigation pest control, for persons using or supervising the use of restricted use pesticides applied through an irrigation system. Certification in this category requires concurrent certification in category 1A, 2, 3, or 10.

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

- (1) Category 1, general agricultural pest control, for private applicators using or supervising the use of restricted use pesticides in the production of agricultural commodities;
- (2) Category 2, agricultural pest control with fumigants, for private applicators using or supervising the use of restricted use pesticides for soil fumigation in the production of an agricultural commodity and the application of restricted use

pesticides for fumigation of agricultural products. Certification in this category requires concurrent certification in category 1, general agricultural pest control; and

- (3) Category 3, chemigation for persons conducting agricultural pest control, with pesticides applied through irrigation systems. Certification in this category requires concurrent certification in category 1.

[Eff. 7/13/81; am and comp]
(Auth: HRS §149A-33, 40 CFR §§171.3, 171.5) **DEC 16 2006**
(Imp: HRS §149A-33, 40 CFR §§171.3, 171.5)

§4-66-57 General standards for certification of applicators. (a) Applicants for certification shall be at least 18 years old;

(b) Competence in the use and handling of pesticides shall be determined by written examination and, as appropriate, upon demonstration based upon standards which meet or exceed those set forth in this subsection and section 4-66-58. The examination shall test knowledge applicable to the classification and category and, if applicable, to the subcategory into which the person is classified and to the pesticide or class of pesticides covered by the requested certification.

(c) Applicants shall demonstrate appropriate knowledge for the certification or certifications requested. The knowledge shall include the following areas:

- (1) An understanding of the general format and terminology of pesticide labels and labeling; an understanding of instructions, warnings, symbols, classification of the product, other information that may appear on the label, and the necessity for following label directions;
- (2) An understanding of pesticide toxicity, common exposure routes and hazard to humans; precautions necessary to guard against injury; need for and use of protective clothing and equipment;

- symptoms of pesticide poisoning; first aid to be followed in pesticide poisoning; proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers including precautions to be taken to prevent children from having access to pesticides and pesticide containers; and procedures for confining and cleaning up pesticide spills;
- (3) An understanding of the potential environmental consequences of the use and misuse of restricted use pesticides, for example, the role of such factors as climatic conditions, types of terrain, soil and substrate, the presence of various non-target organisms, and the potential for surface and ground water contamination;
 - (4) The ability to identify pests and knowledge of the importance of the biology of pests relevant to the applicant's areas of operations;
 - (5) Knowledge of the characteristics of various kinds of pesticides, including types of formulations, compatibility, persistence, mode of action, toxicity, hazard and residues associated with use;
 - (6) Knowledge of the relative importance of pesticides, when they should and should not be used, and the factors which influence their effectiveness;
 - (7) Practical knowledge of type, maintenance, use, and calibration of pesticide application equipment and an understanding of advantages and limitations of various types of equipment. Additional knowledge of calibration shall be required of applicants using or supervising the use of highly specialized equipment such as aircraft;
 - (8) A practical understanding of how to apply pesticides in various

- formulations, such as dusts, wettable powders, emulsifiable concentrates, solutions, and gases, together with a knowledge of application techniques, including timing, safety precautions and restrictions;
- (9) A practical understanding of pesticide drift potential and its effect on non-target organisms, including but not limited to, wildlife, apiaries, and human habitation; and techniques and formulations which reduce drift;
 - (10) Knowledge of applicable federal and state laws and rules; and
 - (11) Applicants shall demonstrate knowledge of the common features of pest organisms and characteristics of damage they cause, pest development and biology as it may be relevant to problem identification and control, and the ability to identify pests relevant to the applicator's areas of operations. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §149A-33, 40 CFR §§171.4, 171.5) (Imp: HRS §149A-33, 40 CFR §§171.4, 171.5)

§4-66-58 Specific standards for certification of applicators. Applicants for certification shall demonstrate competence appropriate to the particular category or subcategory of certification applied for, as follows: (a) Commercial applicators

- (1) For agricultural pest control:
 - (A) Plant pest control applicators shall demonstrate knowledge of the crops grown and the specific pests on these crops on which the applicator may be using restricted use pesticides. Applicators in this category shall demonstrate operational knowledge concerning soil and water problems, pre-harvest intervals, reentry intervals, phytotoxicity, and potential for environmental

- contamination, non-target injury and community problems from the use of restricted use pesticides in agricultural areas; and
- (B) Animal pest control applicators shall demonstrate knowledge of such animals and their associated pests. Special understanding is needed concerning pesticide toxicity to host animals and the hazards associated with factors such as formulation, application techniques, age of animals, stress and extent of treatment, and potential for pesticide residues in meat and other animal products;
- (2) Forest pest control applicators shall demonstrate knowledge of the extent and types of forests, forest nurseries, seed production and pests involved. Applicators in this category shall demonstrate knowledge of the cyclic occurrence of certain pests, population dynamics, and the vulnerability of biota to pesticide application. Because forest stands frequently include watersheds and aquatic situations and harbor wildlife, the applicator shall demonstrate knowledge of pest control methods, that will minimize the possibility of secondary problems such as ground water contamination and unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use;
- (3) Ornamental and turf pest control applicators shall demonstrate knowledge of problems associated with the production and maintenance of ornamental trees, shrubs, flowers and groundcover, and turf, including cognizance of potential phytotoxicity, drift, and persistence beyond the intended period of pest control.

Applicators in this category shall also demonstrate [special] knowledge of the hazards to humans, pets, and other domestic animals associated with the restricted use pesticides utilized in this category;

- (4) Aerial pest control applicators shall demonstrate broad knowledge of the principles of drift and drift control, including the effects of weather, application equipment and techniques, pesticide formulations and adjuvants. Applicators in this category shall also demonstrate knowledge of the potential for an aerial application to cause unreasonable adverse effects to the environment, such as to beneficial insects, wildlife, livestock, non-target plants and people in or near sensitive areas such as schools, parks, playgrounds, hospitals, rest-homes, churches and residential areas;
- (5) Aquatic pest control applicators shall demonstrate understanding of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used to control aquatic pests. Applicators in this category shall demonstrate special awareness of the possibility of oxygen depletion and an understanding of possible pesticide effects on fishes, birds, beneficial arthropods, and desirable plants and other organisms, which may be present in aquatic environments. They shall also demonstrate an understanding of limited area applications;
- (6) Right-of-way pest control applicators shall demonstrate knowledge of a wide variety of environments because rights-of-way can traverse many different terrains, including waterways. Applicators in this category shall demonstrate knowledge of problems of runoff, drift, and

- excessive foliage destruction and shall be able to correctly identify target and non-target organisms. They shall also demonstrate knowledge of the nature of herbicides. Aerial applicators doing right-of-way work shall demonstrate knowledge of application equipment, containment of the pesticide within the right-of-way area, and special drift control methods and procedures;
- (7) Industrial, institutional, structural and health-related pest control applicators shall demonstrate special knowledge of a wide variety of pests, including their life cycles, as well as types of formulations appropriate for the control and methods of application that avoid contamination of food and habitation and do not cause hazards to humans and pets. Specific requirements may vary depending on the subdivisions of this category. As human exposure is frequently a potential problem in this area, applicators must demonstrate knowledge of the toxicity of the pesticides used and factors which may constitute a hazard. Applicators in this category shall demonstrate knowledge of the pesticide labeling of the products typically used in their operations, including hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws and rules;
- (8) Public health pest control applicators shall demonstrate knowledge of pests of public health importance, vector-disease relationships, and etiology of disease-host relationships. Because a wide variety of pests are involved, public health pest control applicators must demonstrate knowledge and recognition of these pests, as well as an understanding of their life cycles and habitats. Applicators in this category shall demonstrate

- familiarity with a great variety of environmental conditions ranging from streams to dwellings. They shall also demonstrate competency in non-chemical control methods such as sanitation, waste disposal, and drainage;
- (9) Regulatory pest control applicators shall demonstrate broad general knowledge of applicable laws, safety, regulated pests, pesticides and the impact of restricted use pesticides on the environment. Applicators in this category shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Applicators shall demonstrate knowledge over and above that required by their immediate duties, because emergency measures are frequently required and individual judgments in new situations must be made; and
- (10) Demonstration, research, and instructional pest control applicators are required to meet particularly high standards since their use of pesticides is presumed to be exemplary. Broad knowledge is required of pests and population levels of pests occurring where demonstrations are to be conducted. Applicators in this category shall demonstrate competency regarding basic concepts of ecology, understanding of pesticide-organism interactions, the importance of integrating pesticide use with other methods, and the potential for various secondary problems. Out-of-state technical representatives visiting or working in the State for thirty (30) days or less per year to demonstrate proper use of a particular product need not be certified in this category if certified in an equivalent category by a jurisdiction authorized by the EPA to issue certifications and upon notification to the head of their

- qualifications and intent to apply restricted use pesticides in the State; and
- (11) Chemigation pest control applicators shall demonstrate practical knowledge of the use of metering devices, strategies and equipment for backflow prevention, and procedures for irrigation system assessment for the distribution consistency of water or chemicals or both.
- (b) Private Applicators:
- (1) Agricultural pest control applicators shall demonstrate practical knowledge of agricultural commodities grown in the State and the specific pests of these commodities on which the applicators may use restricted use pesticides. Applicators in this category shall demonstrate practical knowledge concerning relevant soil and water problems, preharvest intervals, restricted entry intervals, phytotoxicity, and potential for environmental contamination and non-target injury.
- (2) Agricultural fumigation applicators shall demonstrate practical knowledge of the use of personal protective equipment for fumigation, general safety procedures, including posting, restricted entry and aeration. Further, applicators in this category shall demonstrate knowledge of emergency procedures and application techniques appropriate to various situations.
- (3) Agricultural chemigation applicators shall demonstrate practical knowledge of the use of metering devices, strategies and equipment for backflow prevention, and procedures for irrigation system assessment for distribution consistency of water or chemicals or both.

[Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth:
HRS §149A-33, §§171.4, 171.5) (Imp: HRS
§149A-33, §§171.4, 171.5)

§4-66-59 REPEALED. [Eff. 7/13/81;
R **DEC 16 2006**]

§4-66-60 Certification procedures. (a) The
procedures for certifying commercial applicators are
as follows:

- (1) For initial certification of commercial applicators and renewal of commercial applicator certificates, application shall be on forms provided by the head. The applicant for certification as a commercial applicator shall pass a written examination with a score of seventy per cent or better, at a time and place designated by the head. Instruction and examination shall cover the standards specified in sections 4-66-57(c) and 4-66-57(d) in a core examination and, if applicable, section 4-66-58 in a category or subcategory examination.
- (2) If the applicant fails to pass the core examination, that applicant is eligible to be re-examined no sooner than fourteen (14) days after the date of the failed examination. A passing score on the core examination will be valid for six months after the date of examination. The applicant may use a passing score on the core examination to be eligible to take category or subcategory examinations.
- (3) Certification in a category or subcategory under section 4-66-58 requires a passing score on both the core examination and the category or subcategory examination. A passing score on the category or subcategory examination will not be valid unless the applicant also attains a passing score on the core examination. If the applicant passes the examinations and meets all other requirements for certification, a certificate will be issued subject to compliance with other State agency requirements.

(4) For renewal of commercial applicator certificates, application for renewal may be made no sooner than ninety (90) days before and no later than thirty (30) days after expiration of certification. To qualify for renewal prior to December 31, 2006, an applicant should contact the Department's pesticides program to determine the number of hours of training credit needed to qualify for recertification under policies valid through that date. Beginning January 1, 2007, an applicant for recertification must complete one of the following procedures:

(A) Accumulate the prescribed number of hours of training approved for each category or subcategory in which the applicator is certified. Completion of the training must be verified by documentation approved by the head. The training must be completed prior to the expiration date on the applicator's certificate. The minimum number of training hours for each specific category is listed in the table below. Training must be pertinent to the category or subcategory for which the applicant is seeking to renew certification.

Category	Applicator	Hours of training required
1A	Plant Pest Control	25
1B	Animal Pest Control.	20
2	Forest Pest Control.	30
3	Ornamental & Turf Pest Control.	30
4	Aerial Pest Control.	25
5	Aquatic Pest Control	25
6	Right-of-Way Pest Control.	30
7A	Fumigation Pest Control.	25*
7B	Termite Pest Control	20
7C	General Pest Control	30
7D	Institutional Pest Control	30
7E	Vault Fumigation	25*

7F	Specialty Categories	20
8	Public Health Pest Control	24
9	Regulatory Pest Control.	20
10	Demonstration, Research, & Instructional Pest Control	30
11	Chemigation.	5*

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

(B) Pass a written examination as provided in section 4-66-60(a)(1).

(5) If the applicant has accumulated the required number of credits or passed the written examination and meets all other requirements for certification, a certificate may be issued.

(b) The procedure for certifying private applicators is as follows:

(1) For initial certification of private applicators and renewal of private applicator certificates, application shall be on forms provided by the head. To qualify, the applicant shall pass a written examination with a score of seventy per cent or better, at a time and place designated by the head. The examination shall cover the standards specified in sections 4-66-57(c) and 4-66-57(d) and the applicable standards in section 4-66-58(b). If the applicant fails to pass the examination, that applicant is eligible to be re-examined no sooner than fourteen (14) calendar days after the date of the failed examination. If the applicant passes the examination and meets all of the other requirements for certification, a certificate may be issued.

(2) Application for renewal of a private applicator certification shall be made no sooner than ninety (90) days before and no later than thirty (30) days

after expiration of certification. To qualify, the applicant must complete one of the following procedures:

- (A) Accumulate twenty (20) hours of training credits. Applicators certified in agricultural fumigation and agricultural chemigation, or both must accumulate five (5) hours of training specific to each applicable category. Completion of training must be verified by documentation approved by the head. The training must be completed prior to the expiration date shown on the applicator's certificate. If the applicant has accumulated the required number of training credits, and meets all other requirements for certification, a certificate may be issued.
 - (B) Pass a written examination as provided in section 4-66-60(b)(1).
- (3) Procedure for certification of non-English proficient private applicators. Non-English proficient private applicators may be certified to use a specific product by passing an oral examination in English administered by the head or any person approved by the head, with a score of seventy percent or better at a time and place designated by the head. A translator may be present at the applicant's option and expense. Instruction and examination shall cover the standards specified in sections 4-66-57(c) and 4-66-57(d) and the appropriate standards in §4-66-58(b). If the applicant fails to pass the examination, that applicant is eligible to be re-examined no sooner than fourteen (14) calendar days after the date of the failed examination. The applicant shall also demonstrate, through an actual pesticide

application, the ability to apply pesticides according to label directions and understand sources of advice and guidance necessary for safe and proper application of pesticides covered. If the applicant passes the examination and the demonstration, a certificate shall be issued. Any certificate issued pursuant to this paragraph shall be limited to five (5) restricted use products chosen by the applicant. Renewal of certificates issued under this section can be granted only through the procedures described in this paragraph.

(c) Procedures to obtain approval of certification credits for training classes are as follows. A training class sponsor shall submit a written application for certification credits for training classes to the head at least fourteen (14) days before the scheduled date of each class. The application shall include instructor credentials, a class description (outline) of sufficient detail so evaluation can be made. The head shall issue or deny credits within ten (10) days following receipt of the request. The number of credits issued for a training session shall be based on an evaluation of course content, instructor qualifications, and the duration of the course (normally 1 credit for each 50 minutes). The head may adjust the number of credits assigned if department monitoring of the course demonstrates that content and duration either exceeds or fails to meet course description as approved by the head. Credits shall be awarded to those applicators whose attendance at the session is documented. The training class sponsor shall maintain a record of attendance at the approved sessions. The record shall show the name, certification number, arrival and departure time for each attendee desiring credits toward certification renewal. The sponsor will forward the record of attendance to the head within 10 days following the course.

(d) All certifications and renewals issued under this section shall be valid for five years following date of issuance unless revoked.

Application for renewal shall be on forms provided by the head.

(e) Changes to Certificates and Replacement Certificates. A certification is valid for the name, category, address, and employer, if applicable, shown on the certificate or recorded on the application for certification or certification renewal. Any changes to the certificate must be reported to the head within thirty (30) days of the change, on forms provided by the head. Applicators may request a replacement certificate to update information, to replace lost certificates, and to consolidate certifications on different certificates. The replacement certificate with appropriate changes shall be issued after payment of appropriate fees. A replacement certificate will expire on the same date as the original certification, unless the applicant requests consolidating certifications onto a single certificate, then those certifications will expire on the earliest certificate's expiration date.

[Eff. 07/13/81; am and comp **DEC 16 2006**]
 (Auth: HRS §149A-33, 40 CFR §171.7) (Imp: HRS §149A-33, 40 CFR §171.7)

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

- (1) The person is under the direct supervision of an applicator certified in a category appropriate to the restricted use pesticide being used;
- (2) The person shall be given specific written instructions by the certified applicator for applying the pesticide, safety measures to be taken (including emergency procedures), and contacting the certified applicator at any time during the application;
- (3) The certified applicator shall be responsible for all violations of the Act and this rule; and
- (4) The label of the pesticide being used does not prohibit its use by a non-certified person under the direct

supervision of a certified applicator,
and in the manner prescribed by the
label.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
(Auth: HRS §149A-33, 40 CFR §171.6) (Imp: HRS
§149A-33, 40 CFR §171.6)

§4-66-62 Certified pesticide applicator
recordkeeping.

(a) Certified pesticide applicators shall keep records of all applications of restricted use pesticides applied, at their principal place of business.

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

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

(c) Commercial applicators applying any pesticide in agricultural operations must furnish a written record containing the following information to the agricultural employer before the pesticide is applied:

- (1) The specific location and description of the treated area;
- (2) Time and date of application;

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

[Eff. 7/13/81; am and comp **DEC 16 2006**]
 (Auth: HRS §149A-33, 40 CFR §171.7) (Imp: HRS §149A-33, 7 CFR §110, 40 CFR §§170.224, 171.7)

§4-66-63 REPEALED. [Eff. 7/13/81;
 R **DEC 16 2006**]

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

(b) An annual use permit is required for the purchase and use of picloram. Additional pesticides may be designated as requiring an annual use permit as provided in section 4-66-63.1(a).

(c) Application for an annual permit shall be on forms provided by the head, and shall include the applicant's name and address, name of applicator, acreage amount to be treated, location, and other information as the head may require. An application and permit may be amended during the permit year to add acreage, other locations, additional quantity of the pesticide or other changes, as appropriate.

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

[Eff and comp **DEC 16 2006**] (Auth: HRS
§149A-19) (Imp: HRS §149A-32.5)]

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

- (1) A written statement shall be filed by an applicant for such permit on forms provided by the head;
- (2) The statement shall include date, name, address and certification number of applicant, purpose of aerial treatment, pesticide formulation, dosage, method of aerial treatment and the proposed number of treatments to be made, a sketch or map to indicate general wind directions, proposed site or sites to be treated, homes, roadways, waterways and crop plantings in the vicinity;
- (3) The head may refuse to issue a special permit if it is determined that the proposed aerial treatment may cause unreasonable adverse effects to humans or the environment or will create a hazard. All refusals shall be in writing and the reasons for refusal stated;
- (4) A special permit issued under this subsection shall specify the time period for which the special permit is valid. The head may specify and limit a special permit to cover a single, multiple, or continual treatments when conditions are not expected to change or vary during subsequent treatments that are conducted in the same designated area or areas;
- (5) Any special permit issued under this subsection may be canceled by the head before its stated expiration date for reasonable cause. Such cancellation shall be in writing and reasons for cancellation stated;

- (6) The head shall be notified at least twenty-four hours before treatment is made; and
- (7) The issuance of a special permit to apply a restricted use pesticide by aircraft under this subsection shall not relieve the permittee from the penalty provisions of the Act or any liability for any damage or contamination of crops or plants, animals, man and the environment resulting from the aerial treatment

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

- (1) Spray equipment on aircraft shall be leakproof. Spray nozzles shall be equipped with a device to prevent dribble when spray is turned off;
- (2) Self-propelled power rigs used for interrow or broad-cast applications shall be equipped with a pressure control device and a pressure gauge; and
- (3) Power rigs, mist blowers, and other equipment shall be in good working order with no excessive leaks along the pesticide material flow route.

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

(d) Licensed sales outlets shall sell restricted use pesticides relevant only to the certification category of the certified applicator.

[Eff. 7/13/81; am and comp **DEC 16 2006**]
 (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-65 REPEALED. [Eff. 7/13/81;
 R **DEC 16 2006**]

§4-66-66 Fees. (a) The head shall set forth and collect fees for licensing of dealers,

licensing of pesticides and certification of applicators as follows:

- (1) A fee of \$270 shall be assessed for each product licensed in State for the three-year licensing periods beginning on January 1, 2007 and January 1, 2008. A fee of \$330 shall be assessed for each product licensed in the State for the three-year licensing period beginning January 1, 2009 and each three-year licensing period thereafter. A licensee who desires to continue to have the license in effect shall submit an application for renewal and \$330 for each pesticide product license to be renewed;
- (2) A fee of \$250 shall be assessed annually for the license of each principal sales outlet and a fee of \$100 for each branch sales outlet of restricted use pesticide dealers;
- (3) A fee of \$25 shall be assessed for each examination taken for certification or renewal of certification;
- (4) A fee of \$25 will be assessed for the issuance of a replacement applicator certificate or dealer representative license;
- (5) A fee of \$50 shall be assessed for the issuance of an initial pesticide applicator certificate or dealer representative license for restricted-use pesticides (valid for 5 years).
- (6) A fee of \$50 shall be assessed for renewal of a pesticide applicator certificate or dealer representative license (valid for 5 years).
- (7) A fee of \$25 shall be assessed for each examination taken for pesticide dealer representative license.
- (8) A fee of \$.25 per page shall be assessed to copy documents.
- (9) A fee of up to \$25 may be assessed for each hour of educational services or training provided by the department staff.

(b) Fees shall be waived, with approval of the head, for personnel of state agencies and the University of Hawaii who apply restricted use pesticides for quarantine purposes, public health and forestry pest control, utility and roadway maintenance, and research and demonstration. [Eff. 7/13/81; am and comp **DEC 16 2006**] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

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

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

(c) For private applicators and other persons referred to in section 149A-41(b)(2), Hawaii Revised Statutes, the penalty assessment shall apply after the written warning requirement of section 149A-41(b)(2) has been satisfied. [Eff. **DEC 16 2006**] (Auth: HRS §§149A-20, 149A-33, 149A-41) (Imp: HRS §§149A-20, 149A-41)

§4-66-67 Severability. If any section of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected. [Eff. 7/13/81, comp **DEC 16 2006**] (Auth: HRS §149A-52) (Imp: HRS §149A-52)

Amendments to and compilation of chapter 66, title 4, Hawaii Administrative Rules, on the Summary Page dated October 24, 2006 were adopted on October 24, 2006 following public hearings held on October 10, 2006, October 11, 2006, and October 12, 2006 after public notice was given in the Honolulu Star Bulletin on September 4, 2006.

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



SANDRA LEE KUNIMOTO
Chairperson
Board of Agriculture

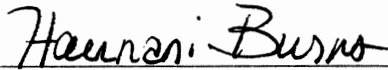


LINDA LINGLE
Governor
State of Hawaii

Dated: **DEC -5 2006**

Filed

APPROVED AS TO FORM:



Deputy Attorney General

06 DEC -6 PM 2:23
LIEUTENANT GOVERNOR'S
OFFICE

ENFORCEMENT ACTION AND PENALTY ASSESSMENT SCHEDULE

ADOPTED October 24, 2006

Type of Violation	Party Responsible for Violation	Potential for Harm	History of Violation	Monetary Penalty	Other Action
I. USE PENALTIES:					
(a) Use inconsistent with label directions					
(1) Private applicator and other persons pursuant to Section 149A-41 (b) (2) HRS	Private applicator	Adverse Effects None	Second or Subsequent Occurrence	Up to \$500	None
	Private applicator	Adverse Effects Minimum or Unknown	Second or Subsequent Occurrence	\$500-750	Certificate Suspension (CS): 0-6 months
	Private applicator	Adverse Effects High	Second or Subsequent Occurrence	\$750-1000	CS: 6-12 months
(2) Commercial applicator and others pursuant to Section 149A-41 (b) (1), HRS					
	Commercial applicator	Adverse Effects None	First Occurrence	Up to \$500	Warning Notice
	Commercial applicator	Adverse Effects Minimum or Unknown	First Occurrence	\$500-2000	CS: 0-6 months
	Commercial applicator	Adverse Effects High	First Occurrence	\$2000-5000	CS: 6-12 months
	Commercial applicator	Adverse Effects None	Second Occurrence	Up to \$1000	CS: 0-3 months
	Commercial applicator	Adverse Effects Minimum or Unknown	Second Occurrence	\$1000-3000	CS: 3-12 months
	Commercial applicator	Adverse Effects High	Second Occurrence	\$3000-5000	CS: 12-24 months
	Commercial applicator	Adverse Effects None	Third or Subsequent Occurrence	\$1000-3000	CS: 0-6 months
	Commercial applicator	Adverse Effects Minimum or Unknown	Third or Subsequent Occurrence	\$3000-5000	CS: 6-24 months
	Commercial applicator	Adverse Effects High	Third or Subsequent Occurrence	\$5000	CS: 24-36 months

ENFORCEMENT ACTION AND PENALTY ASSESSMENT SCHEDULE

Type of Violation	Party Responsible for Violation	Potential for Harm	History of Violation	Monetary Penalty	Other Action
(b) Direct supervision not provided over restricted use pesticide application ¹	Private applicator	Adverse Effects High	First Occurrence	None	Warning Notice
	Private applicator	Adverse Effects High	Second Occurrence	Up to \$500	CS: 0-3 months
	Private applicator	Adverse Effects High	Third or Subsequent Occurrence	\$500-1000	CS: 6-12 months
	Commercial applicator	Adverse Effects High	First Occurrence	Up to \$1000	CS: 0-6 months
	Commercial applicator	Adverse Effects High	Second Occurrence	\$1000-3000	CS: 3-9 months
	Commercial applicator	Adverse Effects High	Third or Subsequent Occurrence	\$3000-5000	CS: 6-12 months
2. RECORDKEEPING AND SALES PENALTIES					
(a) Private applicator use records	Private applicator		First Occurrence	None	Warning Notice
	Private applicator		Second Occurrence	Up to \$500	CS: 0-3 months
	Private applicator		Third or Subsequent Occurrence	\$500-1000	CS: 3-6 months
(b) Commercial applicator use records	Commercial applicator		First Occurrence	Up to \$1000	CS: 0-6 months
	Commercial applicator		Second Occurrence	\$500-1000	CS: 3-9 months
	Commercial applicator		Third or Subsequent Occurrence	\$1000-5000	CS: 6-12 months
(c) Making a restricted use product available for use by a non-certified applicator	Pesticide Dealer, Licensed Representative or Registrant/Shipper		First Occurrence	Up to \$1000	License Suspension (LS): 0-6 months
	Pesticide Dealer, Licensed Representative or Registrant/Shipper		Second Occurrence	\$1000-3000	LS: 6-9 months
	Pesticide Dealer, Licensed Representative or Registrant/Shipper		Third or Subsequent Occurrence	\$3000-5000	LS: 9-12 months

ENFORCEMENT ACTION AND PENALTY ASSESSMENT SCHEDULE

Type of Violation	Party Responsible for Violation	Potential for Harm	History of Violation	Monetary Penalty	Other Action
3. PRODUCT PENALTIES					
(a) Not licensed with State	Pesticide Dealer or Registrant/Shipper			Up to \$1000	Stop-Sale (Removal from Sale)
(b) Not registered with EPA	Pesticide Dealer or Registrant/Shipper			\$1000-5000	Stop-Sale (Removal from Sale); Referral to EPA
(c) Registration denied, cancelled or suspended	Pesticide Dealer or Registrant/Shipper			\$3000-5000	Stop-Sale (Removal from Sale); Referral to EPA
(d) Minor labeling deficiencies (EPA registration establishment number, net weight, name and address of manufacturer	Pesticide Dealer or Registrant/Shipper			Up to \$1000	Stop-Sale (Removal from Sale); Referral to EPA
(e) Major labeling deficiencies (deficient precautionary statements, directions for use, inaccurate ingredient statement).	Pesticide Dealer or Registrant/Shipper			\$1000-5000	Stop-Sale (Removal from Sale); Referral to EPA
(f) Adulteration (contents of container deviate up to 20% from the ingredient statement on the products label).	Pesticide Dealer or Registrant/Shipper			Up to \$2000	Stop-Sale (Removal from Sale); Referral to EPA
(g) Adulteration (contents of container deviate 20% or more from the ingredient statement on product's label).	Pesticide Dealer or Registrant/Shipper			\$2000-5000	Stop-Sale (Removal from Sale); Referral to EPA

1. (Footnote for item 1.(b)) Failure to provide direct supervision is viewed as a significant deviation from the label with potential for high adverse effects in every situation.